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Nos. 82-1326, 82-1327 and 82-1511

In the Supreme Court of the United States

OCTOBER TERM, 1982

JAMES G. WATT, ET AL., PETITIONERS,

v.

STATE OF CALIFORNIA

WESTERN OIL AND GAS ASSOCIATION, ET AL., PETITIONERS

v.

STATE OF CALIFORNIA, ET AL.

STATE OF CALIFORNIA, ET AL., CROSS-PETITIONER

v.

JAMES G. WATT, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

(Counsel of Record Appear on Inner Cover)

PETITIONS FOR CERTIORARI FILED BY JAMES G. WATT, ET AL., AND WESTERN OIL AND GAS ASSOCIATION, ET AL., FILED ON FEBRUARY 8, 1983

CROSS-PETITION BY THE STATE OF CALIFORNIA, ET AL., FILED ON MARCH 11, 1983

CERTIORARI GRANTED MAY 16, 1983

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RELEVANT DOCKET ENTRY

PLAINTIFFS

THE STATE OF CALIFORNIA, Acting by and through GOVERNOR EDMUND G. BROWN, JR., THE CALIFORNIA COASTAL COMMISSION, THE CALIFORNIA RESOURCES AGENCY, THE CALIFORNIA DEPARTMENT OF FISH AND GAME, THE CALIFORNIA DEPARTMENT OF CONSERVATION,

DEFENDANTS

JAMES G. WATT as Secretary of the Interior; THE UNITED STATES DEPARTMENT OF INTERIOR; EDWARD HASTEY as Acting Director of the United States Bureau of Land Management; ROBERT BUFORD as Director Designate of the United States Bureau of Land Management in his official capacity as Director when and if assumed; and the UNITED STATES BUREAU OF LAND MANAGEMENT

DATE	NR.	PROCEEDINGS
4/29/81	nm	1. Fld complt. Issd summs. Case may be ref to Mag McMahon for Discovery.
5/1/81	dv	2. Fld pltfs' notc of motn & motn for prelim inj; memo of P&A in suppt; & declar retbl 6/1/81 at 10 AM
	sb	3. Fld pltf's notc of of lodging varios docs
		4. Fld Federal deft's ex parte applic with declar, for set of schedule for briefing & hrg on pltf motn for prelim inj
		5. Fld deft's declar of James R. Arnold
		6. Fld pltf's ex parte applic for oed shortening ti & cal on other than motn day & declar & memo of P/A in suppt thereof
5/7/81	dv	7. Fld stip & ORD(MRP) consolidatng cases 81-2080 & 81-2081, under CV81-2080
		8. Fld ex parte applic for Ord shortening ti
5/12/81	sb	9. Fld memo in suppt of motn to interve as deft
		10. Fld Ord graning ex parte applic ord shortening ti

11. Fld notc of motn for lv to intervene as deft reble 5-22-81 10am
12. Fld motn for lv to interverne as deft
13. Fld Ord pltf's motn for prelim inj be heard on 5-22-81 10am
14. Fld plftf's consent of cnsl for designation pur local rule 1.3
15. Fld deft's memo in resp to pltf motn for prelim inj
16. Fld aff in suppt of motn to interverne
17. Fld notc of Ord granting ex parte applic for rd shortening ti b applic for intervention
18. Fld opp of applic for interve to pltf's motn for prelim inj

5/13/81 dv

19. Fld defts' notc of lodgng docs
20. Fld notc of Francis X. Bellotti, AG of Massachusetts, to fil a brief as Amicus Curiae
21. Fld applic for lv to appear Pro Hac Vice on behf of Francis X. Bellotti
22. Fld pltfs in inerventn Local Govts' notc of motn for prelim inj, retbl 5/22/ 10 am
23. Fld pltfs in interventn Local Govts' motn for prelim inj
24. Fld pltfs in interventn Local Govts' memo of P&A in suppt of motn
25. Fld Local Govts' motn to intervene as ptys pltf, retbl 5/22/81, 10 am
26. Fld Local Govts' notc of motn to intervene
27. Fld Local Govts' memo in suppt of motn to intervene
28. Fld Local Govts' applic & memo for ord shrtning tim, aff of Irwin Karp in sup & ORD (MRP) shortng tim is shortnd such that the service which has already be made of th docs as std in the Cert of Svc attched to the Notc of Motn to Intervene is sufficient svc on the ptys. Fur ORD that each pty to actn is to notified by phone nlt noon on 5/14/81 of this ord.

29. Fld Ex parte applic by St of Alaska for leav to fil Amicus Curiae Brief
30. Fld ORD(MRP) GRANTING leav for St of Alaska to fil Amicus Curiae Brief
31. Fld St of Alaska's applic & ORD(MRP) allowing Lauri J. Adams to appear as nonresident atty design Theodora Berger or John Saurenman as local cnsl.
32. Fld St of Alaska's notc & Amicus Curiae Brief on pltf's motn for prelim inj
33. Fld St of Alaska's aff of svc of various docs re Amicus Curiae re prelim inj

5/14/81 dv

34. Fld applic of Coastal States Organization to fil brief as amicus curiae
35. Fld ORD(MRP) GRANTING Coastal States Organizatn leav to fil brief as amicus curiae
36. Fld amicus curiae brief of Coastal States Organizatn in suppt of pltfs' motn prelim inj
37. Fld fed defts' declar of James Lecky

5/15/81 dv

38. Fld fed defts' 2nd notc of lodgng
39. Fld fed defts' exh L-U, L-Y, L-EE, & L-FF
40. Fld applic St of Maine's requst to appear as Amicus Curiae
41. Fld applic St of Maine's applic & ORD(MRP) allwng Elzabeth Butler to appear as non-resdnt atty design John Saurenman as local cnsl
42. Fld pltf St of Calif closng memo in suppt of motn for Prelim Inj
43. Fld pltfs' notc of lodgng docs
44. Fld pltfs errata sheet
45. Fld memo of amicus curiae Francis Bellotti in suppt of motn for prelim inj concurring stmt of the St of Maine
46. Fld pltfs' reply brief in suppt of motn for prelim inj

5/15/81	dv	47.	Fld St of Oregon's motn for amicus Curiae status
		48.	Fld St of Oregon's aff supptg motn for ord grntg Amicus Curiae status
		49.	Fld ORD(MRP) GRANTING St of Oregon Amicus Curiae status
		50.	Fld applic St. of Oregon's motn for pro hac vice
		51.	Fld ORD(MRP) GRANTING pro hac vice for State of Oregon, allowing Mary Deits, Ast AG for St of Oregon, to appear before this crt.
		52.	Fld St of Oregon's designatn of local cnsl, desig George Deukmejian, AG, & Theodora Berger, Dep AG.
		53.	Fld ORD(MRP) design AG George Deukmejian & Dep AG Theodora Berger & John Surenman as local cnsl for St of Oregon
5/18/81	dv	54.	fld Local Govts' reply memo of Fed defts' & to applicnts-for-interventns' oppos to motn for prelim inj
5/20/81	dv	55.	Fld Co. of San Diego's motn for leav to intervene as a pty pltf, retbl 6/15/81 at 10 am
		56.	Fld Co of San Diego's notc of motn
		57.	Fld Co of San Diego's memo of P&A in suppt ot motn
		58.	Fld Co of San Diego's dec of svc by mail of motn & related docs LODGED Co of San Diego's prop review of Administrativ Actn & Complant in Intervn for declaratory & Injunctv Relief & Mandamus
*5/19/81	dv	59.	Fld resp of California pltfs to Westrn Oil & Gas Assoc's opposn to prelim inj motns
*5/19/81	dv	60.	Fld applic & ORD(MRP) allowng E. Edward Bruce to appear as non-resident at desig Howard Privett as locl cnsl, on bhf of Western Oil & Gas Assn.

*5/19/81	dv	61. Fld applic & ORD(MRP) allowng Constance Chatwood to appear as non-resid at desig Howard Privett as locl cnsl, on bhf of Western Oil & Gas Assn.
*5/19/81	dv	62. Fld proof of svc of S&C, svd on Robert Burford by svg Carole Purcell on 5/4/81; US Bureau of Land Mgmnt by svg Ed Hastey, Actng Dir.; Edward Hastey Actng Dir of BLM; James Watt, Secy of Interior by svg Carol Kesterson; US Dept of the Interior by svg Carol Kesterson, Chief, Docket Rcrds; on 5/5/
5/20/81	dv	63. Fld stip re presence of affiants
		64. Fld Natural Resources Defns Council's reply to opposn of Westrn Oil & Gas et al. to pltfs' motns for prelim inj
		65. Fld NRDC's respns to Western Oil & Gas Assn's motn to intervene
5/22/81	ag	66. Fld applicnts ansr for intervntn to pltf Cal complt for declatry and inj relief and mandms
5/22/81	ag	67. Fld pltfs' exh subm on oil compnys positn regrdng the possib impossiblty of"undoing" a lease sale
5/22/81	dv	68. Fld ORD(MRP) allowng Western Oil & Gas Assoc et al lev to intervene as defts
		69. Fld ORD(MRP) GRANTING motn of local govts to intervene as pltfs
		70. Fld complant of pltfs in interventn seekng review of an administrativ decision, declaratory & injunctiv relief, & mandamus
		71. Fld proof of svc of pltfs' notc of motn & motn for prelim inj, P&A, on James Arnold by mail on 5/4/81
		72. MIN ORD: Crt GRNTS motns to interven & GRANTS Amicus Curiae briefs. ORD matrs contd to 5/27/81 at 9 am.

5/28/81	yd	73.	Fld Prelim Injunctn that motns of pltfs in interventn are GRANTED & Fed defts, etc. are restrained & enjoined fr acceptng or rejectng any bids, issuing any leases or tkng any other actn in connectn w/OCS Lease Sale 53, Santa Maria Basin, for trac #129 thru 142, 144 thru 146, 148 thru 155 & 158 thru 164 exc for receiving & opening of bids & conducting internal admin review of all bids. Fur ORD that no prtys, bidders, etc. sh be deemed per permitted to acquire any rights or interests as result of this permitted opening of bids. (ENT 5-29-81) Mld Notc
5/28/81	sb		Fld reporter transcript of proceeding on 5/27/81
5/27/81	sb	72.	MIN ORD: Crt grant inpart prelim inj & ord no bond to be post as to CA.
6/10/81	kt	73.	MIN ORD: stat conf; crt ORDS x-mots for S/J be fld 6-19-81, resp to be fld 7-2-81 & hrg set 7-10-81 at 10am; cys of papers to be delive to law office & chambers; crt fur ORDS defts have 60 days to ans
6/12/81	dv	74.	Fld deft/intervenors AMENDED ANSWER to COMPLAINT
6/15/81	sb	75.	MIN ORD: cnsl to file statmnt of genuine issue of material fact & prop finding & judg by 7-2-81 crt take motn to intervene under submission
6/19/81	sb	76.	Fld pltf's notc of lodging docs
		77.	Fld pltf memo of P/A in suppt of pltf motn for S/J
		78.	Fld pltf's notc of motn & motn fr S/J retble 7-10-81 10am
	sb	79.	Fld intervention aff of Irwin D. Karp
		80.	Fld intervention memo of P/A in suppt of motn fr S/J
		81.	Fld intervention notc of motn fr S/J retble 7-10-81 10am
6/22/81	sb	82.	Fld notc regarding Coastal State organization brief on S/J

6/25/81	sb	83. Fld table of author
6/25/81	sb	84. Fld pltf Stip & Ord (MRP) modifying prelim inj
		85. Fld 3rd notc of lodge docs given to clrk
7/2/81	dv	LODGED pltfs' prop findgs of fct & concl of law LODGED pltfs' prop S/J LODGED pltf State of Calif's prop findngs of fct & concl of law in suppt of prelim inj
7/2/81	dv	86. Fld pltf-in-intrvntn Local Govts' reply memo re x-motns for S/J & WOGA intrvnrs' motn to dsms
		87. Fld intrvnr-defts' Opinion in No Oilport v. Carter, Civ no C80-360M (WD Was)
		88. Fld intrvnr-deft Chevron USA, Inc's reply memo in suppt of motn for S/J
		89. Fld intrvnr-deft Chevron USA, Inc's reply memo in suppt of motn to dsms cmpl of NRDC, et al, & Co. of Humboldt, et al, for lack of standing
		90. Fld intervnr-deft Chevron USA Inc's stmt of genuine issues of fct & law
		91. Fld State of Oregon's brief of Amicus Curiae
		92. Fld pltfs' aff of Trent W.Orr
		93. Fld pltfs' reply memo in suppt of NRDC's motn for S/J
		94. Fld pltf State of Calif's memo of P&A in oppsn to defts' motns for S/J
		95. Fld pltf State of Calif's stmt of genuine issues
		96. Fld amicus Curiae A/G of Massachusetts' memo in suppt of pltfs' motn for S/J
7/6/81	dv	97. Fld So. Carolina Coastal Council's motn & ORD(MRP) to appear pro hac vice & to fil amicus curiae brief; amicus curiae brief
		98. Fld pltfs-in-intrvntn local govts' stmt of issues & prop findngs of fct — concl of law

		99.	Fld pltfs-in-intrvntn local govts' FIRST AMENDED COMPLAINT seeking review of an administratv decision, declar & inj relief, & mandamus
7/7/81	dv	100.	MIN ORD: On Crt's own motn the motn to dsms & all motns for S/J set for 7/1 are contd to 7/17/81 at 10 am
7/16/81	dv	101.	Fld intervenor-defts' ANSWER TO FIRST AMENDED COMPLAINT of pltf-intrvenor local govts
7/13/81	sb	102.	Fld memo of AMICUS CURIAE state of Alaska in suppt of pltf motn fr S/J
		103.	Fld pltf's notc of motn supplement the complt pur to F.R.C.P. rule 15 memo of P/A IN SUPPT THEREOF RETBLE —/3/81 10 am
7/10/81	sb	104.	Fld pltf's notc of motn to supplemental the compl pur to ruel 15 8/3/81
		105.	Fld pltf memo of P/A in suppt of motn to supplemtnal the complt
		106.	Fld applic fr permission to file Amicus Curiae Brief
		107.	Fld Ord (MRP) granting permission to file Amicus Curiae Brief
7/13/81	sb	108.	Fld Federal deft resp to ex parte applic by stat of CA to amend complt
7/10/81	sb	109.	Fld Amicus Curiae Brief on behalf of San Luis Obispo County area council gov't in suppt of pltf & pltf in intervention
7/14/81	sb	110.	Fld stat of CA ex parte Ord (MRP) settlemnt complt on 7/17/81 10 am
		111.	Fld. notc of obj the depart of interior administrative record
		112.	Fld ex parte applic fr ord shortenting ti & fr cal on othr than motn day declar memo of P/A suppt thereof
7/16/81	cm	113.	Fld intrvnr-dft's memo in oppos to pltf's mtns to suplmnt complt.
		114.	Fld fed dfts' oppos to mtns to suplmnt compltzzs.

7/23/81	dv	115.	Fld fed defts' ANSWER TO FIRST AMENDED COMPLAINT of local govts
*7/17/81	dv	116.	MIN ORD: Hrg 1) pltfs motn to supplt the cmplnt & motn for S/J; 2) interv-de motn for S/J & motn to dsms; 3) Fed defts motn for S/J: Crt DENIES motn to supplmnt the cmplnt. Crt taks matr under submisn & cont to 7/27/81 at 9 am for Crt's rulng. Crt to grant a 30 dy stay at time of rulng.
7/23/81	dv	117.	Fld federal defts' ANSWER TO COMPLAINT of California
7-27-81	kt	118.	Stay ORD(MRP) that enforcmt of jdmt of 7/27/81 shall be stayed for 45 days to permit appellate proceedgs, as fur specified 2/in this ord
		119.	Fld Stay ORD(MRP) that enforcmt of jdmt of 7/27/81 shall be stayed for 45 days until 9/10/81; fur ord that OCS Lease Sale 53, etc is tolled 45 days, secy of Interior isempowered to cont to hold bids for thoe tracts opened on 5/28/81 & not considered rejected on 7/27/81; fur ORD that crt's prelim injunc of 5/28/81 shall be cont in effect for 45 days as to certain tract numbers as fur specified 2/in this ord
		120.	Fld Stip & ORD re all materials lodged by all ptys w/crt are considered part of the record of the Crt's determinatn of this case
7/27/81	dv	121.	MIN ORD: Hrg on Crt's rulng on pltfs motn to suppl the cmplnt, motn to dsms & S/J motns: Crt GRANTS Co of San diego's motn to intrven tkn under subt on 6/15/81. GRANTS & DENIES in part motn to dsms & motns for S/J. DENIES motn to supplement the cmplnt. GRANTS a 45 dys stay. Crt to fil writn opinion by 8/4/81
		122.	Fld ORD(MRP) re inj ent 7/27/81 (see ord)

8/18/81	cm	123.	Fld Opinion (MRP). (ENT 8/18/81) mld cpies & notc of ent.
		124.	Fld ORD(MRP) grantng dft-intrvnr's mtn to dism in NRDC vs Watt Mtn to dism in Calif vs Watt denied. (ENT 8/18/81) mld cpies notices. MD-JS-6
		125.	Fld ORD(MPR) grantng pltf's mtn fr S/J. Mtn fr S/J re pltf's claim arisng undr Coastal Zone Management Act denied. Crt fun ORDS(MRP) dfts & dft-intrvnr's enjoind frm certain actns. Dft mtn fr S/J re claims undr Outer Continental Shelf Lands Act grantd. Pltf's mtn fr S/J re claims undr certain statutes den Dft-intrvnr's mtn to dism pltf's Natural Resources Defense Council grantd. Dft-intrvnr's mtn to dism pltf-intrvnrs Count of Humboldt denied, each prty to bear own costs. crt shall re cont jurisdctn ovr this case to ensure compliance w/ord. (ENT 8/18/81). mld cpies & notc of entry.
8/19/81	am	126.	Fld deft's NOTC OF APPEAL to 9th Cir C/A frm ord ent 8/18/81. $70.00 flng & docket fees pd.
8/19/81	am	127.	Fld deft govt's NOTC OF APPEAL to 9th Cir C/A frm ord ent 8/18/81.
8/26/81	ag	128.	Fld deft transcrpt designatn
8/31/81	dv		Lodged copy of ord frm USCA, 9th Cir, grantg appellants' motn for partial stay p appeal. Perm inj from DC ent 8/18/81 is stayd til 14 dys aftr mandate of the Appellants' motn for expeditd review is grantd
9/16/81	lw	129.	Fld pltfs' NOTC OF APPEAL to 9th Cir C/A frm ORD ent 8/18/81 $70.00 fldng & docket fees pd.
9/18/81	dv	130.	Fld deft Western Gas's amdd transcrpt desig & ordering form on appeal
9/18/81	dv	131.	Fld pltf's trnscrpt desig & orderng form on appeal

PLAINTIFFS

NATURAL RESOURCES DEFENSE COUNCIL, INC., THE SIERRA CLUB; FRIENDS OF THE EARTH; FRIENDS OF THE SEA OTTER; AND THE ENVIRONMENTAL COALITION ON LEASE SALE 53,

DEFENDANTS

JAMES G. WATT, in his official capacity as Secretary of the United States Department of the Interior; the UNITED STATES DEPARTMENT OF THE INTERIOR; ED HASTEY, in his official capacity as Acting Director of the United States Bureau of Land Management; ROBERT BURFORD, Director-Designate of the United States Bureau of Land Management in his official capacity as Director when and if assumed; and the UNITED STATES BUREAU OF LAND MANAGEMENT,

DATE	NR.		PROCEEDINGS
4/29/81	jdc	1.	Fld Complt. Issd Summs. Case may be ref to Mag Kronenberg for dscvry.
		2.	Fld Pltfs' Notc of related case purs to LR 2(g).
5/1/81	dv	3.	Fld pltfs' motn for prelim inj, retbl 6/1/81 at 10 AM
		4.	Fld pltfs' memo of P&A in supt LODGED Pltfs' prop prelim inj
5/1/81	yd	5.	Fld defts declaratn of James R. Arnold
	yd	6.	Fld Fed defts Ex Parte applicatn w/declaratn for settng of schedule for briefn & hrg on pltfs' motn for prelim injunctn
5/4/81	cm	7.	Fld ORD(MRP,RJK) transfrng actn to Mariana R. Pfaelzer for all future procedngs. parties notfd. Case may be referred tomagistrate MacMahon for disc.
5/7/81	sb	8.	Fld Ord the pltf's motn prelim inj be held 522-81 10 am
		9.	Fld Stip & Ord(MRP) for consolidaton of case no. 81-2080
5/22/81	sb	10.	Fld Answer of appli for INTERVENTION to complt of NRDC et al
		11.	Fld pltf's proof of serv/acknowledge of serv
5/28/81	sb	12.	Fld motn to appear as AMICUS CURIAE
		13.	Fld applic for admins pro Hac Vice

5/19/81	sb	14.	Fld retn summs serv to Robert Burford, 5-4-81 & United states Bureau on 5-5-81 & United state bureau of Land Management on 5-5-81 & Edward Hasty, Acting Director, of Bureau of Land managements on 5-5-81
6/12/81	sb	15.	Fld intervenor-def amended answer to complt NRCD etal
	sb	16.	Fld Stip & Ord subst of parties in intervention
6/19/81	sb	17.	Fld notc of motn for S/J; memo of P/A in suppt thereof retble 7-10-81 10 am
7/2/81	sb	18.	Fld Federa; deft's reply memo in suppt of their motn fr S/J
		19.	Fld local gov't pltf reply memo re corss-motn fr S/J & Woga intervene motn to
7/23/81	sb	20.	Fld Federal deft's ANSWER TO COMPLT of natural Resource defense Council Inc E
8/18/81	cm	21.	Fld Opinion (MRP). (ENT 8/18/81) mld cpies & notc of ent.
		22.	Fld ORD(MRP) grantng dft-intrevnr's mtn to dism in NRDC vs Watt. Mtn to dism in Calif vs Watt denied. (ENT 8/18/81) MD-JS-6 mld cpies & notc of ent.
		23.	Fld Fld ORD(MRP) grantng pltf's mtn fr S/J. Mtn fr S/J re pltf claim arisng undr Coastal Zone Management Act denied. Crt Fur ORD(MRP) dfts & dft-intrvnr's enjoind frm certain actns. Dft's fr S/J re claims undr Ounter Continental Shelf Lands Act grantd Pltf's mtn fr S/J re claims undr certain statutes denied. Dft-intrvnr's mtn to dism pltf's Natural Resources Defense Council grantd. Dft-intrvnr's mtn to dism pltf-intrvnr's County of Humboldt denied, each prty to bear own costs. Crt shall retain cont jurisdctn ovr this case to ensure compliance w/ord. (ENT 8/18/81). Mld cpies & notc of ent.
8/19/81	am	24.	Fld deft's NOTC OF APPEAL to 9th Cir C/A frm ord ent 8/18/81.

8/19/81	am	25.	Fld deft's NOTC OF APPEAL to 9th Cir C/A frm ord ent 8/18/81.
	sb	26.	Fld respondent proof of serv or ORD onmotn
	sb	27.	Fld transcript designation & deft,
9/18/81	sb	28.	Fld req fr copy of transcript

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CIVIL ACTION NO. 81-2080-MRP(Mx)
Filed: Apr. 29, 1981

THE STATE OF CALIFORNIA, ACTING BY AND THROUGH GOVERNOR EDMUND G. BROWN, JR., THE CALIFORNIA COASTAL COMMISSION, THE CALIFORNIA AIR RESOURCES BOARD, THE CALIFORNIA RESOURCES AGENCY, THE CALIFORNIA DEPARTMENT OF FISH AND GAME, THE CALIFORNIA DEPARTMENT OF CONSERVATION,
PLAINTIFFS,

v.

JAMES G. WATT AS SECRETARY OF THE INTERIOR; THE UNITED STATES DEPARTMENT OF INTERIOR; EDWARD HASTEY AS ACTING DIRECTOR OF THE UNITED STATES BUREAU OF LAND MANAGEMENT; ROBERT BURFORD AS DIRECTOR DESIGNATE OF THE UNITED STATES BUREAU OF LAND MANAGEMENT, IN HIS OFFICIAL CAPACITY AS DIRECTOR WHEN AND IF ASSUMED; AND THE UNITED STATES BUREAU OF LAND MANAGEMENT,
DEFENDANTS.

REVIEW OF ADMINISTRATIVE ACTION
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND MANDAMUS

Plaintiff, the State of California, alleges:

DESCRIPTION OF THE ACTION

1. This action for declaratory and injunctive relief and for relief in the nature of mandamus seeks to review the final decision of April 28, 1981 of the Secretary of the Interior ("Secretary") to lease certain areas off of the central California coast in the Santa Maria Basin for the exploration, development and production of oil and gas resources, i.e. the decision to lease the Santa Maria Basin. This action seeks to prevent the Bureau of Land Management from leasing 34 of the 115 tracts in this lease sale which is currently scheduled for May 28, 1981. This action also seeks to require the Secretary and the Department of the Interior ("Department") to conduct consistency reviews pursuant to the Coastal Zone Management Act (16 U.S.C. § 1456(c)).

JURISDICTION

2. The jurisdiction of the Court is invoked pursuant to:

(a) The provisions of 28 U.S.C. § 1331(a) and 28 U.S.C. §§ 2201-2202, this being an action for declaratory and injunctive relief arising under the Constitution and laws of the United States;

(b) The provisions of 28 U.S.C. § 1361, this being an action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to plaintiff;

(c) Section 10 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, which provides for the judicial review of actions of federal agencies;

(d) 43 U.S.C. §§ 1349(a)(1) and 1349(b)(1) of the Outer Continental Shelf Lands Act Amendments of 1978;

(e) The provisions of the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.;

(f) 16 U.S.C. § 1540(c) of the Endangered Species Act.

VENUE

3. Venue in the United States District Court for the Central District of California is proper in this case both because this is the judicial district in which a defendant resides or may be found and because this is the judicial district nearest the place where the cause of action arose. (28 U.S.C. § 1391; 43 U.S.C. § 1349(b)(1).)

PARTIES

4. Plaintiff in this action is the State of California acting by and through the Governor and the following State agencies, all of which participated in the administrative process which culminated in the decision to lease the northern 34 tracts in the Santa Maria Basin:

(a) Edmund G. Brown, Jr., is Governor of the State of California and as such, participated extensively in the administrative process. A part of this participation was the submission of extensive recommendations and comments pursuant to section 19(c) of the Outer Continental Shelf Lands Act Amendments [43 U.S.C. § 1345(c)] concerning the size, timing and location of the lease sale.

(b) The California Coastal Commission ("Coastal Commission") is charged with implementing the California Coastal Act of 1976 (Cal. Pub. Res. Code § 30000 et seq.) and is designated as the State coastal zone planning and management agency for any and all purposes and may exercise any and all powers set forth in the Coastal Zone Management Act (16 U.S.C § 1451 et seq.; "CZMA") that relate to the planning or management of the coastal zone (Cal. Pub. Res. Code § 30330). The Coastal Commission repeatedly commented that the decision to lease the northern 31 tracts in the basin was inconsistent with California's federally approved Coastal Management Plan, and repeatedly requested that a consistency determination be conducted by the Department.

(c) The California Air Resources Board ("CARB") is the State agency charged with coordinating, encouraging and reviewing the efforts of all levels of government to attain and maintain ambient air quality standards for the State (Cal. Health & Safety Code §§ 39003, 39500). The CARB is

also the designated air pollution agency for all purposes set forth in federal law including the preparation of the State implementation plan. (Cal. Health & Safety Code § 39602.) The CARB commented regarding deficiencies in the Environmental Impact Statements prepared for the lease sale and noted the adverse air quality impacts of the lease sale.

(d) The California Resources Agency is generally responsible for the protection of the various environmental and natural resources of the State (Cal. Gov. Code § 12805.) The Resources Agency is also responsible for administration of the California Environmental Protection Program. (Cal. Pub. Res. Code §§ 21190-21193.)

(e) The California Department of Fish and Game is charged with establishing criteria for determining whether a species of mammal, bird, fish, amphibia or reptile is rare and endangered and is further charged with inventorying said threatened species. (Cal. Fish and Game Code §§ 900-902.) The Department of Fish and Game is also charged with encouraging the proper maintenance and utilization of the living resources of the ocean. (Cal. Fish and Game code §§ 1700 et seq.)

(f) The California Department of Conservation is charged with the supervision of oil and gas drilling, operation and maintenance so as to prevent damage to life, health and natural resources, to prevent loss or damage to oil and gas deposits or the loss of oil and gas reservoir energy. (Cal. Pub. Res. Code §§ 603, 607, 3106.)

5. The State of California acting by and through the Governor and these State agencies has a valid legal interest which is or may be immediately and adversely affected by leasing the 34 northern tracts in the Santa Maria Basin for oil and gas exploration, development and production, and may therefore maintain this action seeking compliance with the Outer Continental Shelf Lands Act (43 U.S.C. §§ 1349(a)(1), 1349(a)(3).

DEFENDANTS

6. James G. Watt is the Secretary of the Interior. In such executive capacity he has the authority pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331,

et seq., to lease offshore tracts on the Outer Continental Shelf for oil and gas exploration and development. His decisions are subject to and restricted by the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 et seq.; the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706; the Endangered Species Act (ESA), 16 U.S.C. § 1531 et seq.; and the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1451 et seq.

7. The Department of the Interior is a part of the executive branch of the federal government. The Department of the Interior and its personnel, acting by and through the Department, are subject to the provisions of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq.; NEPA, 42 U.S.C. § 4321, et seq.; APA, 5 U.S.C. §§ 701-706; ESA, 16 U.S.C. § 1531 et seq.; and CZMA, 16 U.S.C. § 1451 et seq.

8. Edward Hastey is the Acting Director of the Bureau of Land Management, a part of the Department of the Interior. Until such time as the permanent Director is confirmed by the United States Senate, he has the responsibility to administer leasing on submerged lands on the Outer Continental Shelf; to evaluate fully the potential effect of a leasing program on the total environment; to develop any special leasing stipulations necessary to protect the environment and other resources; and to publish proposed and final notices of sales. (43 C.F.R. Part 3300.)

9. Robert Burford is the Director-Designate of the Bureau of Land Management. If and when he is confirmed by the Senate for the directorship, he will assume the responsibilities presently vested in Acting Director Hastey as set forth in the preceding paragraph.

10. The Bureau of Land Management is an agency of the Department of the Interior, some of whose employees, acting on behalf of the Secretary or the Director, aid them in the performance of their duties regarding hydrocarbon activities on the OCS.

FACTS

11. On November 29, 1977, a Call for Nominations and Comments was issued by the Bureau of Land Management

("BLM"). The area under consideration covered 10,742,183 acres on the central and northern California OCS. The Call requested the petroleum industry to designate specific tracts on which it would like to bid if a sale were held. Government agencies and other groups were asked to identify tracts that they believed should be excluded from oil and gas leasing or leased under more stringent restrictions due to conflicting resource values or environmental factors.

12. Following the Call for Nominations and Comments, BLM announced that 27 oil companies had nominated 8,440,116 acres and that 47 comments from federal, state and local governmental agencies and other groups had been received indicating general concerns about offshore leasing or recommending that specific tracts be deleted.

13. Tentative tract selection was announced on October 10, 1978, with 243 tracts to be intensively studied for proposed Lease Sale 53. BLM later established for the final environmental impact statement that the total sale area would involve 242 tracts comprising 1.315 million acres.

14. On May 4, 1979, BLM announced its intention to prepare an environmental impact statement to consider the effects of proposed Lease Sale 53 offshore central and northern California. The Draft Environmental Impact Statement (DEIS) was issued in April 1980 and examined the proposed development of five basins—Eel River, Bodega, Point Arena, Santa Cruz and Santa Maria.

15. California State agencies participated in the review of the DEIS by providing extensive comments on the draft statement. Among the comments provided by the State and its agencies were many which pointed out the numerous deficiencies of the DEIS. California also repeatedly requested the Department to make a consistency determination pursuant to the Coastal Zone Management Act (16 U.S.C. § 1456) and pointed out the dangers posed by the sale to threatened and endangered species listed pursuant to the Endangered Species Act, 16 U.S.C. §§ 1531 et seq.

16. Moreover, during 1979 and 1980 when the 5 year national oil and gas leasing program was being promulgated pursuant to 43 U.S.C. § 1344, California filed with the Department extensive comments raising many of the same

concerns as were raised in its comments on the environmental impact statements and Lease Sale 53.

17. The final environmental impact statement ("FEIS") on Lease Sale 53, released in September 1980, contained an Addendum at page xii which presented revised estimates by the United States Geological Survey of the hydrocarbon reserves present in the five basins. According to the Addendum, the new estimates for the Santa Maria Basin were "roughly twice the amount assumed in the draft and final EIS analyses." No supplemental analyses of the potential environmental effects of oil leasing in the Santa Maria Basin based upon the new estimates were made or circulated to the public and government agencies, pursuant to the National Environment Policy Act ("NEPA").

18. On October 16, 1980, former Secretary of the Interior Cecil Andrus announced the proposed notice of sale for Lease Sale 53. In the proposed notice, the four northern basins—Eel River, Point Arena, Bodega and Santa Cruz—were deleted. The only basin proposed for leasing was the Santa Maria Basin.

19. On December 24, 1980, Governor Brown submitted extensive recommendations and comments pursuant to 43 U.S.C. § 1345(c) concerning the lease sale in the Santa Maria Basin, the only basin remaining in the sale. Among other matters, the Governor objected to the leasing of the northern tracts of the Basin because such leasing would jeopardize the continued survival of the southern sea otter.

20. On February 10, 1981, Secretary of the Interior James G. Watt, issued a revised proposed notice of sale in which the four northern basins deleted by former Secretary Andrus were placed back in the sale. Secretary Watt stated that he took this action in order to provide an opportunity for Governor Brown to submit recommendations concerning the size, timing and location of the sale. The Governor was allowed 60 days to comment on the proposed notice of sale.

21. On April 9, 1981, the Governor's recommendations were hand-delivered to the Office of the Secretary at 12:15 p.m. Submitted was a recommendation 51 pages long as well as recommendations from State agencies and local governments which totalled almost 500 pages. The Governor

also incorporated by reference a series of prior communications that involved nearly 1000 pages of material.

22. The governor made several specific recommendations regarding the Santa Maria Basin. He recommended that leasing proceed in 81 southern tracts in the basin once environmental studies were completed and air quality problems resolved. Regarding the remaining northern tracts, which stretch offshore from Morro Bay to Point Sal, the Governor recommended deletion of a total of 34 tracts for several reasons:

(a) 34 tracts (129-155 and 158-164) were recommended for deletion to protect the Southern sea otter, a threatened specie, and other marine life such as the gray whale, seabirds and fisheries;

(b) Thirty-one tracts (129-155 and 158-161) were recommended for deletion to protect recreation and tourism in the area;

(c) Eleven tracts (131, 134, 138, 146, 147, 151, 152, and 161-164) were recommended for deletion to protect against geological dangers; and

(d) 14 tracts (129-134, 154, 155, 158-160, and 162-164) were recommended for deletion based on consideration of marine safety and the potential impacts of tanker accidents. (The tracts were illustrated in FEIS, visual No. 1.)

The Governor also noted that because the seas are often high in the northern part of the basin, oil spill containment would frequently be ineffective. Finally, the Governor recommended that steps be taken to protect onshore air quality from the adverse impacts associated with OCS developments.

23. In a press release issued at 10 a.m. April 10, 1981, Secretary Watt stated that he intended to lease the entire Santa Maria Basin in May 1981 based on a finding of an overriding national interest. The Secretary also announced that a decision on the remaining four basins would be made in May or June 1981. The Secretary stated that in balancing national interest against local interest, the national interest, measured solely in terms of the value of the oil and gas to be recovered, always would outweigh the well-being of the citizens of the affected coastal states.

24. On April 27, 1981, the Final Notice of Sale for the Santa Maria Basin was published by the Secretary and the Department. (46 Fed. Reg. 23674.) In that notice, the actual sale was scheduled for May 28, 1981. Every tract in the Santa Maria Basin proposed for leasing in the proposed notice of sale was included in the final notice. Each and every recommendation of Governor Brown concerning the size, timing and location of the lease sale was rejected. The Secretary gave no explanation beyond that included in the press release of April 10 of his reasons for rejecting all of Governor Brown's recommendations.

25. The northern Santa Maria Basin is habitat of and is adjacent to habitat of a number of marine mammals, including the southern sea otter and the gray whale.

26. The southern sea otter has been listed as a threatened species under the Endangered Species Act of 1973 since January 14, 1977. (50 C.F.R. § 17.11, pp. 63, 79.) The gray whale has been listed as an endangered species under the Act and its predecessor, the Endangered Species Conservation Act of 1969, since June 2, 1970. (50 C.F.R. § 17.11, pp. 65, 79.)

27. The best available estimate of the present size of the southern sea otter population is 1,443, estimated in 1979. The figure is a small fraction of its former population size. According to the Lease Sale 53 FEIS, the present size of the gray whale population is 15,000.

28. Virtually the entire gray whale population migrates through the Santa Marin Basin area twice a year. In November through January, the bulk of the southward migration occurs. In February through April the bulk of northward migration occurs. The FEIS admits that oil population may harm or destroy whales through skin exposure, inhalation of oil, and ingestion of oil, both directly and through contaminated food supplies.

29. The FEIS acknowledges that an oil spill could have a disastrous effect on the southern sea otter. Its entire population is distributed between Pismo Beach and Santa Cruz, and between the Santa Maria Basin and Santa Cruz Basin, which the Secretary may offer for lease in June. The otters are particularly sensitive to oil contact because their fur

acts as their chief insulation from cold water, and contact with oil destroys the insulating ability of the animals' fur, leading to death from exposure. Additional dangers are posed by ingestion of oil-contaminated food. A large spill could destroy a major portion of the otter population.

30. The Department and the BLM, pursuant to 16 U.S.C. § 1536(a)(2) and (b), consulted with the Secretary of Commerce, through the National Marine Fisheries Service, and with the defendant Secretary himself, through the United States Fish and Wildlife Service, about the likelihood of Lease Sale 53 jeopardizing, 1) whales and sea turtles and 2) sea otters, respectively. The biological opinions which were rendered, concluded that leasing and exploration activities were not likely to jeopardize any of these species although development activities might.

FIRST CLAIM

THE LEASE SALE OF THE 34 NORTHERN TRACTS IN THE SANTA MARIA BASIN CANNOT BE ALLOWED TO PROCEED BECAUSE SECRETARY WATT HAS MISINTERPRETED AND MISAPPLIED SECTION 19 [43 U.S.C. § 1345] OF THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978 [43 U.S.C. § 1331 et seq.]

31. Plaintiffs incorporate by reference the allegations of Paragraphs 11 through 24 above with the same force and effect as if set forth in full herein.

32. In 1978, Congress enacted the Outer Continental Shelf Lands Act Amendments ("OCSLAA") as a comprehensive revision of the Outer Continental Shelf Lands Act of 1953. Among the goals of the Congress was that the discretion of the Secretary of the Interior with regard to OCS oil and gas leasing be curbed and that the affected coastal states be given a leading role in OCS decisionmaking.

33. Section 19 of OCSLAA (43 U.S.C. § 1345) is the tool by which states are to have their leading role in OCS decisionmaking as to individual lease sales. The section provides that the governor of an affected state may submit recommendations on the size, timing and location of a proposed lease sale. Subsection (c) of § 19 further provides that the Secretary "shall accept recommendations of the

Governor ... if ... they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State." "National interest" is defined in terms of recovering oil and gas in a "balanced manner" and in terms of the findings, purposes and policies of OCSLAA. "National interest" therefore means much more than simply recovering oil and gas."National interest" includes the interest that leasing proceed in a balanced manner, that the marine, human and coastal resources be preserved, that competing uses of the sea be preserved, and that recreational uses of the coast be preserved.

34. In balancing the national interest and the well-being of the citizens of the affected state, the governor's recommendation is critical. Congress intended this recommendation to play a leading role in decisions on the size, timing and location of lease sales. Congress manifested this intent by directing the acceptance of the governor's balanced recommendation.

35. Governor Brown submitted detailed, specific recommendations concerning the size, timing and location of leasing in the Santa Maria Basin. These recommendations provided for a reasonable balance between the national interest and the well-being of the citizens of California by recommending that leasing proceed in the 81 southern tracts and that the 34 northern tracts not be leased. Therefore, pursuant to § 19, the Secretary was required to accept Governor Brown's recommendation.

36. The Secretary has, however, misinterpreted the OCSLAA and has taken an unbalanced, and unsupported view of the requirements of § 19. He has determined that "national interest" means only the recovery of oil and gas resources and nothing more. This is in direct conflict with the language of § 19 and the legislative history of the section. Moreover, the Secretary has determined that the well-being of the citizens of California can never outweigh the "national interest" and that the national interest is served only by leasing and exploring for oil. The Secretary has decided that the states have only parochial interests at heart, are opposed to all OCS development, and have no decision authority under the OCSLAA.

37. A controversy presently exists between plaintiffs and defendants concerning the legal rights and duties of the respective parties concerning § 19 of the OCSLAA. Plaintiffs desire a declaration that the Secretary has misinterpreted the OCSLAA and § 19 and that because of his erroneous interpretation of the law, the Secretary has improperly performed the balancing required under § 19 and has illegally rejected the recommendations of Governor Brown.

SECOND CLAIM

BECAUSE SECRETARY WATT'S DECISION REJECTING GOVERNOR BROWN'S RECOMMENDATION WAS ARBITRARY, CAPRICIOUS AND AN ABUSE OF DISCRETION AND IT MUST BE REVERSED AND THE SALE OF THE 34 NORTHERN TRACTS CANNOT BE ALLOWED TO PROCEED

38. Plaintiffs incorporate by reference the allegations set forth in Paragraphs 11 through 24 above with the same force and effect as if set forth in full herein.

39. The Secretary is required to give the Governor's recommendation full and careful consideration. Governor Brown's recommendation was 51 pages long and incorporated by reference many other California comments nearly 1000 pages long. Accompanying the Governor's recommendation were nearly 500 pages of state agency and local government comments and recommendations. The Secretary rejected all of this material after it had been in the possession of the Department less than 22 hours. This unseemly haste in rejecting these recommendations was clearly arbitrary and capricious.

40. Secretary Watt's rejection of Governor Brown's recommendation was also arbitrary, capricious and an abuse of discretion because the Governor's recommendation struck the appropriate balance between the national interest and the well-being of the citizens of California. Instead of giving these balanced recommendations the great weight intended by Congress, the Secretary gave them no weight at all. Instead of considering all the relevant factors, the Secretary considered only his belief that all resources must be recovered.

41. Unless the lease sale of the 34 northern tracts planned for May 28, 1981, is enjoined, plaintiffs will be irreparably injured. Section 19 provides that primary tool for the involvement of the coastal states in the OCS leasing process. The opportunity to make recommendations on a lease sale decision which the Secretary must accept occurs only once, and if the sale of these 34 tracts proceeds, the impact of Governor Brown's recommendation will be irretrievably lost. Moreover, if the lease of the 34 tracts is allowed to proceed, there will be an irretrievable and irreversible commitment of resources.

42. Plaintiffs have no speedy, adequate or complete remedy at law to address the wrong herein alleged, and this action for injunction and other relief is plaintiffs' only means of securing relief.

43. An immediate enjoining of leasing of tracts 129-155 and 158-164 in the Santa Maria Basin until defendants have complied with applicable provision of federal law is the only means of preserving the status quo.

THIRD CLAIM

THE LEASING OF THE NORTHERN 34 TRACTS IN THE SANTA MARIA BASIN SHOULD NOT BE ALLOWED TO PROCEED UNTIL THE FINAL NOTICE OF SALE HAS BEEN RENDERED CONSISTENT WITH CALIFORNIA'S FEDERALLY APPROVED COASTAL MANAGEMENT PLAN

44. The Coastal Zone Management Act (16 U.S.C. § 1451 et seq.) was designed by Congress to encourage States to develop comprehensive management programs for their coastal zones. A central part of this design was the promise that federal activities which impacted on a State's coast would have to be conducted in a manner consistent with the State's approved coastal management plan. (16 U.S.C. § 1456.) Congress intended such consistency to extend to energy facility siting and the final notice of sale for offshore oil leases.

45. Pursuant to 16 U.S.C. § 1456, federal agencies which conduct activities "directly affecting" the coastal zone shall conduct those activities to the maximum extent practicable in a manner consistent with a State's approved manage-

ment program. The agency charged with implementing § 1456, the National Oceanic and Atmospheric Administration ("NOAA") has promulgated regulations to the effect that federal activities on the OCS are subject to review to determine whether they directly affect the coastal zone. (15 C.F.R. § 930.33(c); 44 Fed. Reg. 37146.)

46. California's Coastal Zone Management Plan was approved by the Department of Commerce on November 7, 1977.

47. The Department of Interior has consistently rejected NOAA's position and has argued that the only activities directly affecting the coastal zone are those doing so "without intervening cause."

48. In 1979, the Department of Justice issued an opinion concluding that pre-leasing activities of the Secretary of the Interior were subject to the consistency requirements of the Coastal Zone Management Act.

49. Throughout the administrative procedures leading to federal oil and gas lease sales offshore of California, the Coastal Commission has regularly sought to have the Department of Interior conduct a consistency review for the final notice of sale of OCS leasing activities. The Department of Interior refused to apply consistency review to the final notice of sale for Lease Sale 48 (Southern California) and continued to assert that, with the exception of a very restricted category of lease stipulations, prelease activities in general and the final notice of sale in particular do not directly affect the coastal zone.

50. The Coastal Commission sought mediation following the Department's refusal to apply consistency to Lease Sale 48. Although the mediator concluded that the mediation had failed because of the Department's refusal to alter its position on the meaning of "directly affect," he did adopt California's position that the Department had adopted an unduly restrictive definition of "directly affect" and that the Coastal Zone Management Act contemplated a consistency determination regarding pre-lease sale activities.

51. Throughout the administrative process which has culminated in the Santa Maria Basin Lease Sale, the Coastal Commission has sought a consistency determination re-

garding the final notice of sale. The Secretary of the Interior has steadfastly refused to do so and instead has sought to convince the Secretary of Commerce to have NOAA alter its regulations.

52. The Coastal Commission, has long argued, and has so argued regarding this sale, that of the various pre-lease sale activities, only the final tract selection and lease stipulations, i.e. the final notice of sale, do directly affect the California coastal zone. The decision to offer leases for specific tracts is the key activity that creates a right to develop those leases. The lease sale sets the initial boundaries on oil development on the OCS and is a subdivision of the OCS. The decision to lease is also a key planning point for both coastal States and the petroleum industry. The decision to lease basically determines which areas will bear the burden of oil and gas development—burdens such as oil spills, vessel collisions, harm to recreation and tourism, and increased onshore industrialization.

53. The Coastal Commission has informed the Department that the deletion of 31 tracts in the northern portion of the Santa Maria Basin is necessary for the leasing of the basin to be consistent with the California Coastal Management Plan.

54. The Department of Interior's refusal to conduct a consistency determination despite the direct impacts on the coastal zone of the final notice of sale is therefore a clear violation of the Coastal Zone Management Act.

55. A controversy presently exists between plaintiffs and defendants concerning the legal rights and duties imposed by the CZMA, 16 U.S.C. § 1456. Plaintiffs desire a declaration that the final notice of sale (tract selection and lease stipulations) directly affects the coastal zone and requires a consistency determination. Plaintiffs further desire that defendants be ordered to conduct said consistency determination and to comply with all applicable procedures attendant on said determination.

56. Plaintiffs request the Court to retain jurisdiction of this matter until the consistency determination has been made and the Coastal Commission concurs in the determination. Moreover, the Department should not be allowed to

proceed with the proposed activity until 90 days after the consistency statement is prepared. (15 C.F.R. § 930.41(c).)

57. Unless the lease sale of the 34 northern tracts is enjoined, plaintiffs will be irreparably injured in that a federal activity directly affecting the coastal zone will have occurred without the requisite consistency determination and without the following of applicable procedures. Also, conducting the lease sale as to these tracts would cause an irretrievable and irreversible commitment of resources.

58. Plaintiffs have no speedy, adequate or complete remedy at law to address the wrong herein alleged and this action for injunctive and other relief is plaintiffs' only means of securing relief.

59. An immediate enjoining of the planned lease sale as to the northern 34 tracts is necessary to retain the status quo until defendants have complied with applicable federal law.

FOURTH CLAIM
DEFENDANTS VIOLATED THE NATIONAL ENVIRONMENTAL POLICY ACT

60. Section 102(C) of NEPA, 42 U.S.C. § 4332(C), and the regulations of the Council of Environmental Quality thereunder, 40 C.F.R. Part 1500 ("CEQ Regulations"), require a detailed examination of the potential environmental impacts of any major federal action, based on the best available data, to be prepared and circulated to the public and government agencies and officials for their information comment.

61. The CEQ Regulations specifically require that federal agencies must prepare supplements to EIS's if there are significant new circumstances or information bearing on a proposed action or its impacts. 40 C.F.R. § 1502.9(c)(1)(ii). Such a supplement must be prepared, circulated, and filed in the same manner as a draft and final statement. 40 C.F.R. § 1502.9(c)(4).

62. The revised estimates of the United States Geological Survey ("USGS") doubling the expected oil reserves of the Santa Maria Basin constitute significant new information bearing upon the proposed lease sale and its impacts.

The greatest risk to the marine and coastal environments from offshore oil development is that of oil spills. The degree of risk of oil spills is directly related to the amount of oil present in an offshore basin.

63. The failure of the defendants to prepare and circulate a supplemental EIS on the potential impacts of hydrocarbon development in the Santa Maria Basin based upon the USGS's current estimates of reserves violated the requirements of NEPA and the CEQ Regulations. The public and government officials have been denied the right to examine and criticize the proposed action with regard to the Santa Maria Basin in light of an assessment of risks based upon the best available data.

64. Further, because the impacts predicted in the EIS were based on the outdated lower estimates, adequate mitigation measures for the likely impacts of oil development in the Santa Maria Basin were never explored nor submitted to the public as required by 40 C.F.R. § 1502.16(h) of the CEQ Regulations.

65. Unless the lease sale for the northern 34 Santa Maria Basin tracts planned for May 28, 1981, is enjoined by this Court, defendants will take this action, with profound potential effects on the environment, without compliance with the requirements of NEPA and the CEQ regulations. Unless this action is declared unlawful and the defendants are so enjoined, plaintiffs and their members will suffer substantial and irreparable harm. They have no adequate remedy at law.

66. An immediate injunction prohibiting leasing of tracts 129-155 and 158-164 in the Santa Maria Basin until defendants have adequately supplemented their EIS is the only means of preserving the status quo.

FIFTH CLAIM

DEFENDANT VIOLATED THE ENDANGERED SPECIES ACT BY THEIR FAILURE TO SECURE ADEQUATE BIOLOGICAL OPINIONS

67. Section 7(a)(2) of the Endangered Species Act, 16 U.S.C. § 1536(a)(2), provides, in pertinent part:

> Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any

> action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or threatened species.... In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

68. Section 7(d) of the Endangered Species Act, 16 U.S.C. 1536(d), provides, in pertinent part:

> After initiation of consultation ..., the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which would have the effect of foreclosing the formulation or implementation of any reasonable or prudent alternative measures which would avoid jeopardizing the continued existence of any endangered or threatened species....

69. Neither biological opinion prepared for Lease Sale 53 was based upon an analysis of the revised estimates of the USGS of August 1980 which doubled the amount of oil thought to be present in the Santa Maria Basin. While the Fish and Wildlife Service acknowledged the existence of these new estimates, it used the EIS's risk estimates derived from the outdated figures in its opinion. As 16 U.S.C. § 1536(a)(2) requires the agency causing the biological opinion to be prepared to use the best scientific data available, consultation should have been reopened and new opinions sought upon the emergency of the new USGS figures. This has not been done and defendants have thus violated their responsibilities under § 1536(b) to obtain adequate biological opinions so as to be able to meet their obligations under § 1536(a)(2) to insure that the lease sale is not likely to jeopardize the southern sea otter, the gray whale, or other threatened or endangered species.

70. Pending completion of the new consultation required under 16 U.S.C. § 1536(a) and (b), defendants are forbidden under 16 U.S.C. § 1536(d) to make any irreversible or irretrievable commitment of resources which would foreclose the formulation or implementation of reasonable or prudent mitigation measures to avoid jeopardizing a threatened or endangered species. Sale of leases in the northern Santa Maria tracts and the ensuing pre-exploration and

exploitation activities would amount to such a commitment, in violation of § 1536(d).

71. Unless the lease sale for the northern 34 Santa Maria Basin tracts is declared unlawful and enjoined by this Court, plaintiffs and their members will suffer substantial and irreparable harm. They have no adequate remedy at law.

72. An immediate injunction prohibiting leasing of tracts 129-155 and 158-164 in the Santa Maria Basin until defendants have secured adequate biological opinions is the only means of preserving the status quo.

SIXTH CLAIM

THE LEASE SALE WILL RESULT IN AN ILLEGAL TAKING UNDER THE ENDANGERED SPECIES ACT AND THE MARINE MAMMAL PROTECTION ACT

73. 16 U.S.C. § 1538 of the Endangered Species Act makes it:

> "unlawful for any person . . . to . . .
> (B) take any[endangered] species within the United States or the territorial sea of the United States. . . ."

16 U.S.C. § 1532(13) of the act defines person to include "any officer, employee, agent, department or instrumentality of the Federal Government, [or] of any State or political subdivision thereof." 16 U.S.C. § 1532(1) defines the term "take" to mean "harass" or "harm."

74. The National Marine Fisheries Service, which enforces the application of the Act to whales, has promulgated regulations pursuant to the Act similarly providing that no person shall take any endangered species without a permit, 50 C.F.R. 222.21, and defining "take" and "person" in the same terms as the Act, 50 C.F.R. 217.12. While NMFS has not defined "harass" in a regulation, it has issued a "Notice of Interpretation" applying the term to the humpback whale in the Hawaiian Islands which includes *inter alia*, flying less than 1000 feet over a whale, bringing a vessel within 300 yards of the whale, or committing "any other act or omission that substantially disrupts the normal behavioral pattern" of the whale. 44 Fed. Reg. 1113-1114.

75. The Fish and Wildlife Service, which also has enforcement responsibilities under the Act, has defined "harass" to mean (50 C.F.R. 17.3):

> "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to breeding, feeding or sheltering."

Finally, the FWS has defined "harm" to mean (*ibid.*):

> "an act or omission which actually injures or kills wildlife, including acts which annoy it to such an extent as to significantly disrupt essential behavioral patterns, which include, but are not limited to, breeding, feeding or sheltering; significant environmental modification or degradation which has such effect is included within the meaning of harm."

76. The Marine Mammal Protection Act, 16 U.S.C. 1361(2), (6), provides that efforts shall be made to "protect the rookeries, mating grounds, and areas of similar significance for each species of marine animal from the adverse effects of man's actions" and that "the primary objective of their management should be to maintain the health and stability of the marine ecosystem." 1372(a)(2)(A) further provides that it is generally unlawful:

> "for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States..."

77. The regulations of the Fish and Wildlife Service, promulgated pursuant to the Marine Mammal Protection Act, generally provide that it is unlawful for any "person" to "take" any marine mammal on the high seas or on lands under the jurisdiction of the United States. 50 C.F.R. § 18.11. "Marine mammal" is defined to include sea otters. 50 C.F.R. § 18.3. They similarly define "take" as "to harass, hunt, capture, collect, or kill, or attempt to harass, hunt capture, collect, or kill any marine mammal..." *Ibid.* The National Marine Fisheries Service regulations implementing the Marine Mammal Protection Act also prohibit the taking of any marine mammal on the high seas or on lands under jurisdiction of the United States, 50 C.F.R.

216.11, including whales, porpoises, seals and sea lions, 50 C.F.R. 216.3. They define "take" in the same manner as the Fish and Wildlife Service Regulations. The Act further provides "efforts should be made to protect the rookeries, mating grounds and areas of similar significance for each species of marine mammal from the adverse effect of man's actons," 16 U.S.C. 1361(2) and that "the primary objective of their management should be to maintain the health and stability of the marine ecosystem," 16 U.S.C. 1361(6).

78. The FEIS admits that small oil spills, major oil spills, noise, vessel traffic, and other activities associated with offshore leasing, exploration, and development would cause significant harm to sea otters and perhaps to gray whales and other cetaceans. The FEIS predicts 2.29 major spills and 163 minor spills during the production phase of the sale, with over 75 percent of these originating in the Santa Maria Basin. A large spill would have the potential to destroy one third of the sea otter population. Consequently, the proposed sale will result in the harassing, harming, and taking of wildlife protected by the Endangered Species Act and the Marine Mammal Protection Act in violation of those statutes and of the regulations implementing them.

79. Unless the lease sale for the northern 34 Santa Maria Basin tracts is declared unlawful and enjoined by this Court, plaintiffs and their members will suffer substantial and irreparable harm. They have no adequate remedy at law.

80. An immediate injunction prohibiting leasing of tracts 129-155 and 158-164 in the Santa Maria Basin and an ensuing taking of threatened and endangered species in violation of the Endangered Species Act is the only means of preserving the status quo.

RELIEF

WHEREFORE, plaintiffs pray:

1. With regard to § 19 of the OCSLAA:

   (a) For a judgment declaring the Secretary's interpretation of § 19 of the OCSLAA to be erroneous and in violation of the OCSLAA and the Administrative Procedure Act; and

(b) For an order and judgment declaring that the Secretary's rejection of Governor Brown's recommendation both violated § 19 of OCSLAA and was arbitrary, capricious and an abuse of discretion; and

(c) For an order and judgment enjoining defendants both preliminarily and permanently from leasing the northern 34 tracts of the Santa Maria Basin, presently scheduled for May 28, 1981.

2. With regard to the Coastal Zone Management Act, 16 U.S.C. § 1456:

(a) For a judgment declaring that the final notice of sale (tracts selection and lease stipulations) directly affects the coastal zone and that the defendants have violated CZMA by refusing to conduct said leasing of the 34 northern tracts in the Santa Maria Basin in a manner consistent with California's Coastal Management Plan;

(b) For an order and judgment preliminarily and permanently enjoining the leasing of the 34 northern tracts of the Santa Maria Basin by defendants until such consistency determination has been conducted and there has been compliance with all attendant procedures; and

(c) For an order in the nature of a writ of mandamus compelling defendants to conduct said consistency review.

3. With regard to the National Environmental Policy Act:

(a) For a judgment declaring the failure to prepare and circulate a supplement to the environmental impact statement based upon current estimates of oil reserves in the Santa Maria Basin to be a violation of NEPA and the CEQ Regulations thereunder; and

(b) For an order and judgment enjoining defendants both preliminary and permanently from leasing the northern 34 tracts of the Santa Maria Basin until they have prepared an adequate EIS supplement.

4. With regard to the Endangered Species Act, 16 U.S.C. § 1536 et seq.:

(a) For judgment declaring the biological opinions upon which the Secretary based his finding of no likelihood of jeopardy to threatened or endangered species to be an inadequate basis for such finding for lack of consideration of the best available scientific data;

(b) For an order and judgment enjoining defendants both preliminarily and permanently from leasing the northern 34 tracts of the Santa Maria Basin until adequate biological opinions are prepared and the Secretary has properly considered those opinions as required by law; and

(c) For an order in the nature of mandamus compelling defendants to cause such biological opinions to be prepared.

5. With regard to the Endangered Species Act and the Marine Mammal Protection Act, 16 U.S.C. §§ 1361 et seq.:

(a) For a judgment declaring that the sale of leases for the northern 34 tracts of the Santa Maria Basin scheduled for May 28, 1981, would constitute an illegal taking of threatened and endangered wildlife; and

(b) For an order and judgment enjoining defendants both preliminarily and permanently from leasing the northern 34 tracts.

6. For costs of suit herein.

7. For such other and further relief as the Court may deem just and proper.

Dated: APRIL 29, 1981

GEORGE DEUKMEJIAN,
Attorney General
N. GREGORY TAYLOR
Assistant Attorney General
THEODORA BERGER,
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Dear Sirs:

I am responding to the letter dated March 23, 1979, addressed to Assistant Attorney General Harmon from the Acting General Counsel of the Department of Commerce and the Deputy Solicitor of the Department of the Interior requesting the opinion of the Department of Justice on the question whether the pre-leasing activities of the Secretary of the Interior relating to the Outer Continental Shelf[1] are subject to the consistency requirement of § 307(c)(1) of the Coastal Zone Management Act, 86 Stat. 1285, 16 U.S.C. § 1456(c)(1). Section 307(c)(1) provides:

> Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the

[1] According to the papers submitted to us, the pre-leasing activities of the Secretary of the Interior include steps such as: calls for nominations (ascertainment of tracts which the industry would like to see offered for lease, and which other parties believe should not be leased); tract selection; the various steps involved in the preparation of an Environmental Impact Statement; consultation with the Governors; individual tract selection.

maximum extent practicable, consistent with approved state management programs.

Mr. Hamon has asked me to respond.

The Department of the Interior takes the position that its pre-leasing activities relating to the Outer Continental Shelf Lands do not *directly* affect the Coastal Zone, and that, in any event, the applicability, if any, of § 307(c)(1) to those activities has been abrogated by the Coastal Zone Management Act Amendments of 1976 and the Outer Continental Shelf Land Act Amendments of 1978. The Department of Commerce disagrees with both positions. In its view the statutory language "directly affecting the coastal zone" must be read as "significantly affecting the coastal zone", and the significance of the activities in question must be considered in terms of "primary, secondary, and cumulative effects" on the Coastal Zone. It also asserts that the two amendatory acts have no bearing on the scope of § 307(c)(1).

We have examined the materials submitted with the request as well as the complex pertinent legislative histories to the extent possible within your time limitations. We conclude (1) that neither the Coastal Zone Management Act Amendments of 1976 nor the Outer Continental Shelf Lands Act Amendments of 1978 affect the application of § 307(c)(1) to Outer Continental Shelf Land pre-leasing activities, (2) that § 307(c)(1) applies only to activities directly affecting the Coastal Zone, and (3) finally that this Department is not authorized to resolve the essentially factual question whether and to what extent any of the pre-leasing activities of the Department of the Interior under the Outer Continental Shelf Lands Act directly affect the Coastal Zone.

I.

The Coastal Zone Management Act, 16 U.S.C. § 1451 et seq., is primarily concerned with the effective management, beneficial use, production, and development of the Coastal Zone. Section 302(a), 16 U.S.C. § 1451(a). The Coastal Zone extends seaward to the outer limit of the United States territorial sea, inland to the shore line and to

a limited extent to the adjacent shore lands. Section 304(1), 16 U.S.C. § 1453(1).[2] The Act is administered by the Secretary of Commerce. Section 304(15), 16 U.S.C. § 1453(15). For purposes pertinent here the Act provides for the development and administration by the States of state management programs for the Coastal Zone. Those programs require the approval of the Secretary of Commerce. Sections 305, 306, 16 U.S.C. §§ 1454, 1455.

The Outer Continental Shelf Lands Act of 1953, as amended, provides that the Secretary of the Interior shall administer the federal program of oil and gas leasing on the Outer Continental Shelf. Sections 5 and 6, 43 U.S.C. §§ 1334, 1335. The Outer Continental Shelf consists generally of the submerged lands lying seaward of the Coastal Zone of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control. Section 2(a), 43 U.S.C. § 1331(a).

The basic dispute underlying your inquiry is whether and to what extent the pre-leasing activities of the Secretary of the Interior under the Outer Continental Shelf Lands Act are subject to the provisions of § 307(c)(1) of the Coastal Zone Management Act.

A. The Coastal Zone Management Act Amendments of 1976.

Section 6 of the Coastal Zone Management Act Amendments of 1976 added to § 307(c)(3) a new paragraph (b).[3]

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[2] Section 2(e) of the Outer Continental Shelf Lands Act, as added by § 201(b) of the Outer Continental Shelf Lands Act Amendments of 1978, 43 U.S.C. (Supp.) § 1331(e) uses the same definition.

[3] Section 307(c)(3)(B), as amended by the Outer Continental Shelf Lands Act Amendment of 1978 § 504 provides:

> (B) After the management program of any coastal state has been approved by the Secretary under section 1455 of this title, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land use or water use in the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with such state's approved management program and

The Department of the Interior contends that this paragraph is intended to constitute the exclusive method by which, and the only stage at which, the consistency of all aspects of the Outer Continental Shelf Lands leasing process—including pre-leasing activities—with the state management programs is to be determined and that the new paragraph pro tanto supersedes the consistency require-

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will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until—

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;

(ii) concurrence by such state with such certification is conclusively presumed as provided for in subparagraph (A), except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed; or

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security. If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months.

ment of § 307(c)(1). We cannot concur in that interpretation of the 1976 Amendment.

The enactment of § 307(c)(3)(B) originated from a dispute between the Department of the Interior and the Department of Commerce concerning the proper interpretation of § 307(c)(3), now § 307(c)(3)(A).[4] That paragraph provides for the purposes relevant here that, after a state's management program has been approved by the Secretary of Commerce, an applicant for a Federal permit or license for an activity affecting the Coastal Zone must include in the application a certification that the proposed activity complies with the state's program, and that the activity will be conducted in accord with that program.[5] The Department of

[4] Section 307(c)(3)(A) provides:

(3)(A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

[5] The state concurrence in the certification is presumed if it fails to object within six months after receipt of a copy of the applicants' certification. The permit or license may not issue unless the State concurs in the certification or is presumed to have concurred, or unless the

the Interior contended that leases in the Outer Continental Shelf did not come within the purview of the provision; the Department of Commerce took the opposite position.

The dispute came to the attention of Congress during its consideration of the Coastal Zone Act Amendments of 1976. Both legislative committees concluded that § 307(c)(3) is intended, and indeed always was intended to cover leases, and reported out bills amending § 307(c)(3) by adding the word "lease" to the words "license or permit" already included in the paragraph. S. Rept. 94-277, pp. 19, 36-37, 53, 59; H. Rept. 94-878, pp. 4, 52, 67-68, 48.

The Senate agreed with the committee report. The bill passed by it amended § 307(c)(3) to include the word "lease". 121 Cong. Rec. 23050, 23086.[6] When the bill reached the floor of the House it contained the same provision. 122 Cong. Rec. 6124. The amendment of § 307(c)(3), however, was stricken on motion of Congressman duPont, because he felt, on the basis of testimony received from the Administration and the industry, that more time was needed to evaluate the full impact of the proposed amendment. He continued:

> "By striking it in the House bill and leaving it in the bill that has already passed the Senate we will be giving ourselves a little bit of flexibility in the conference to either adopt the language as the Senate put it in or adopt some other language we feel would be more beneficial and at the same time protect the rights of the States.
>
> So the purpose of this amendment is not to get rid of the word "lease" but to allow us time to work on the problem a little bit longer." 122 Cong. Rec. 6128.

Congressman Murphy, who was in charge of the legislation in the House, accepted the amendment, pointing out that even if an applicant were granted a lease the statute required permits and licenses to be subject to the consist-

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Secretary of Commerce finds that the activity is consistent with the objectives of the Act or otherwise necessary in the interest of national security.

[6] See also the explanation of the provision by Senator Hollings who was in charge of the legislation. 121 Cong. Rec. 23053.

ency requirement of § 307(c)(3). Ibid. This observation appears to have been related to the position taken by the Department of the Interior warning of the interminable delays that would result if every lease and every related permit and license was to be subject to the procedures of § 307(c)(3), a matter that could bring about repeated delays of six months. See the letter from Secretary Kleppe of the Department of the Interior to the Director, Office of Management and Budget, dated May 24, 1976.

The conference report adopted by both Houses provided that § 307(c)(3) should be split up. The original paragraph became § 307(c)(3)(A), and the committee added a new paragraph (B). See, *supra*, fn. 3. The import of the new paragraph is that an individual or organization submitting to the Secretary of Interior a plan for the exploration, development of, or production from, an area leased under the Continental Shelf Lands Act, must submit a certification similar to the one required under paragraph (A). If the State agrees to the certification or does not object within six months, or if the Secretary of Commerce makes a finding of consistency, subsequent requests for permits or licenses required for activities described in detail in such plan will not have to go through the conformity procedures provided for in paragraph (A).

The Conference Report contains the following explanation of the amendment:

> Also, under the substitute, any subsequent OCS [Outer Continental Shelf] Federal license or permit required for activities specified in any exploration, development, and production plan are presumed to be consistent once the plan is certified as being so consistent. This important change will significantly expedite OCS oil and gas development. Under present Department of Interior regulations, Federal permits are required for a large number of individual activities including geophysical exploration or production, pipeline right-of-way, structure placement, waste discharge, and dredging and filling operations. Thus, separate consistency determinations on each activity, described in detail in an exploration, development or prouction

> plan, will not be necessary. H. Rept. 94-1298, pp. 30-31.

The explanation of the Conference Report on the floor of the Senate by Senator Hollings contained the following pertinent observation:

> Third, a new incentive for expediting determination of whether particular off-shore energy activity is consistent with a coastal State's approved management program, on an overall plan basis rather than on an individual license/permit by license/permit basis; * * *. 122 Cong. Rec. 21230.

* * *

The amendment was thus designed to overcome the difficulties adverted to by Secretary Kleppe, namely, that a new conformity review under § 307(c)(3), involving a six-month delay, would be required every time the lessee of Outer Continental Shelf Lands had to apply for a new license or permit.

The Department of the Interior appears to believe that paragraph (B) embodies an exclusive provision concerning the consistency requirement of the Outer Continental Shelf Lands leasing process with Coastal Zone state management plans and that it therefore supersedes § 307(c)(1) with respect to the entire process, including the preleasing stage. It thus relies on the doctrine of repeal by implication. The Supreme Court, however, has consistently applied the rule that repeals by implication are not favored; that the intention of the legislation to repeal must be clear and manifest; that every attempt must be made to reconcile the statutes involved; and that a repeal by implication will be found only where there is a "positive repugnancy" between the statutes in question. *Morton* v. *Mancari*, 417 U.S. 535, 549-551 (1974); *Borden* v. *United States* 308 U.S. 188, 198-199 (1939).

In our view the relationship between §307(c)(1) and 307(c)(3)(B) does not meet these rigorous standards, at least not for the pre-leasing period.[7] The two provisions can

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[7] We need not examine the question, not presented by your inquiry, whether once a plan for the exploration, or development, or production envisaged by § 307(c)(3)(B) has been filed, that paragraph becomes the

readily coexist during that period and there is no "positive repugnancy". There is nothing explicit or implied in the 1976 Amendments to the effect that the procedure set forth in § 307(c)(3)(B) provides the only consistency requirement for the entire Outer Continental Shelf Land leasing process. Paragraph (B) is designed to relieve the lessee of the burdens and delays resulting from successive consistency determinations for the many license and permit applications that may follow the grant of a lease and the approval of an exploration, development, or production plan. Under § 307(c)(3)(B) there will be a single consistency review following the submission of the plan by the lessee, and that review will cover any future activities described in detail in the plan. Section 307(c)(3)(B) thus simplifies the regulatory process during the post-leasing period. It has no bearing on the consistency requirements antedating that stage of the leasing process. It is well possible that some of the pre-leasing activities of the Secretary of the Interior will give rise to consistency problems which cannot be reviewed at all under the paragraph (B) procedure, or for which such review comes too late. It is our opinion that with respect to pre-leasing activities § 307(c)(1) and § 307(c)(3)(B) can both be given effect and accordingly that the enactment of § 307(c)(3)(B) does not disclose any clear and manifest legislative intent to supersede, and does not supersede, the applicability of § 307(c)(1) to those pre-leasing activities of the Secretary of the Interior relating to the Outer Continental Shelf Lands which come within the scope of that section.

B. The Outer Continental Shelf Act Amendments of 1978.

The second statute which in the view of the Department of the Interior supersedes § 307(c)(1) regarding leases is the Outer Continental Shelf Land Amendments Act of 1978. Section 208 of that Act adds to the Outer Continental Shelf Lands Act of 1953 a number of new sections con-

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exclusive procedure for the determination of the consistency requirement, covering both the Department of the Interior and the lessee, or whether the Department of the Interior remains subject to the additional consistency requirement of § 307(c)(1).

taining specific procedures for the Outer Continental Shelf Lands leasing program. Some of those provisions are expressly adjusted to the Coastal Zone Management Act. (See especially the repeated references to §§ 306 and 307(c)(3)(B) of the Coastal Zone Management Act in § 25 of the Outer Continental Shelf Lands Act added by the 1978 Amendments, 43 U.S.C. (Supp.) § 1351.)

The most significant apparent conflict between the 1978 Amendments and § 307(c)(1) appears in § 19 of the Outer Continental Shelf Lands Act, 43 U.S.C. (Supp.) § 1343, entitled "Coordination and Consultation with Affected State and Local Government." Pursuant to § 19(c) the Governor of a State, or the executive of an affected local government, may submit to the Secretary of the Interior recommendations regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development or production plan. It provides that the Secretary of the Interior shall accept those recommendations unless he decides that they do not provide for a reasonable balance between the national interest [in increasing oil production] and the well-being of the citizens of the affected State. The pertinent committee reports say that no "State should have a veto power over OCS [Outer Continental Shelf] oil and gas activities." S. Rept. 95-284, p. 78; H. Rept. 95-590, p. 153.

Under oridinary circumstances we might be inclined to find a clear legislative intent to the effect that the recommendations referred to in § 19(c) were designed to take the place of the conformity requirement of § 307(c)(1) of the Coastal Zone Management Act. The language and legislative history of the 1978 Amendments, however, refute any such intent.

Section 608(a) of the 1978 Amendments provides expressly that:

> Except as otherwise expressly provided in this Act, nothing in this Act shall be construed to modify, or repeal any provision in the Coastal Zone Management Act of 1972...

More specifically, the section-by-section analysis of § 19 in the House Report contains the following footnote expressly disclaiming any Congressional intent to modify by

implication the consistency requirements of the Coastal Zone Management Act:

> "The committee is aware that under the Coastal Zone Management Act of 1972, as amended in 1976 (16 U.S.C. 1451 et seq.), certain OCS [Outer Continental Shelf] activities including lease sales and approval of development and production plans must comply with 'consistency' requirements as to coastal zone management plans approved by the Secretary of Commerce. Except for specific changes made by Titles IV and V of the 1977 Amendments,[8] nothing in this Act is intended to amend modify or repeal any provision of the Coastal Zone Management Act. Specifically, nothing is intended to alter procedures under that Act for consistency once a State has an approved Coastal Zone Management Plan." H. Rept. 5-590, p. 153, fn. 52.

We therefore conclude that neither the Coastal Zone Management Act Amendments of 1976 nor the Outer Continental Shelf Lands Act Amendments of 1978 affect the application of the consistency requirement of § 307(c)(1) of the Coastal Zone Management Act to the pre-leasing activities of the Department of the Interior.

II.

Having determined that the pre-leasing activities of the Secretary of the Interior are subject to the conformity requirements of § 307(c)(1) of the Coastal Zone Management Act, we now reach the second question posed in the submission. The Department of the Interior contends that, if § 307(c)(1) applies at all to its pre-leasing activities, it applies only to those activities which, according to the plain statutory language of the paragraph, directly affect the Coastal Zone.

The implementing regulations issued by the Department of Commerce in 1978, however, substitute the term "significantly" for the statutory word "directly" and define 'significantly" in terms of "primary, secondary, and cumulative

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[8] The House Report was submitted in 1977. Title V of the 1978 Amendments contains express amendments to the Coastal Zone Management Act. Section 504 modifies § 307(c)(3)(B)(ii).

effects". 15 CFR §§ 930.30, 43 Fed. Reg. 10518-10519. The department explains its departure from the statutory language on the ground that, while the various provisions relating to the consistency requirement are not uniform in language, the legislative history is "replete" with statements that Congress intended to cover all Federal activities capable of significantly affecting the Coastal Zone. See 43 Fed. Reg. 10511. In our view the legislative history does not justify this departure.

Prior to the conference, the text of § 307(c)(1), as passed by both Houses of Congress, subjected all federal activities in the Coastal Zone to the consistency requirement. Senate: 118 Cong. Rec. 14190 (§ 314(b)(1)), House: 118 Cong. Rec. 26502. (§ 307(c)(1)). The Conference Committee changed federal activities "in the Coastal Zone" to the present statutory language of "directly affecting the Coastal Zone." The Explanatory Statement in the Conference Report does not explain why the Committee departed from the language common to the bill as it had passed both Houses.[9] The statement, however, indicates a full awareness that the different paragraphs of § 307(c) applied different standards of Federal impact on the Coastal Zone: § 307(c)(1) "directly affecting"; § 307(c)(2) "in the Coastal Zone"[10]; § 307(c)(3) "similar consideration".

In view of this history of the words "directly affecting" we are unable to concur in an interpretation that would dilute "directly" first to "significantly" and then to "primarily, secondarily, and cumulatively."

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[9] They (the conferees) also agreed that as to Federal agencies involved in any activities directly affecting the State coastal zone and any Federal participation in development projects in the coastal zone, the Federal agencies must make certain that their activities are to the maximum extent practicable consistent with approved State management programs. In addition, *similar consideration* of State management programs must be given in the process of issuing Federal licenses or permits for activities affecting State coastal zones. H. (Conf.) Rept. 92-1544, p. 14. (Emphasis applied.)

[10] The regulations issued by the Department of Commerce extend the "significantly affect" tests even to § 307(c)(2) which in terms applies only to activities "in the Coastal Zone".

Finally, in our discussion of the question of repeal by implication we have pointed out that § 307(c)(1) and § 307(c)(3)(B) are separate provisions dealing with different stages of the leasing process. We have concluded that the provision concerning the post-leasing process does not necessarily repeal a provision addressed to the pre-leasing stage. Similarly when the statute provides for different impact requirements at different stages of the leasing process, there is no need, and indeed no justification, for an attempt to obliterate those express statutory differences by regulation. It is our opinion that the conformity requirement of §307(c)(1) applies only to the pre-leasing activities of the Department of Interior directly affecting the Coastal Zone. The question whether those activities or any of them directly affect the Coastal Zone is essentially one of fact which the Department of Justice is not authorized to answer. See 28 Op. A.G. 218, 222 (1910); 39 Op. A.G. 425, 428 (1940).

Sincerely,

/s/

LEON ULMAN
Deputy Assistant Attorney General
Office of Legal Counsel

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Maryland 20852

March 23, 1979

MEMORANDUM TO: Record
GC—Eldon V.C. Greenberg
FROM: Application of CZMA Section 307(c)(1) Consistency Requirement
SUBJECT: to Interior's OCS Pre-Lease Sale Activities

BACKGROUND

A. The Coastal Zone Management Act of 1972

Under section 307(c)(1) of the Coastal Zone Management Act as originally enacted in 1972 (16 U.S.C. 1451, *et seq.*, CZMA), all federal agencies conducting activities significantly affecting the coastal zone were required to ensure that their activities be conducted in a manner "to the maximum extent practicable, consistent" with state coastal management programs approved under the CZMA. The federal agency was responsible for making a consistency determination and, in the event of a serious disagreement with such a determination by a state, voluntary mediation by the Secretary of Commerce, in cooperation with the Executive Office of the President, was available. This section applied to all federal activities and thus included the Department of the Interior's Outer Continental Shelf (OCS) pre-lease sale activities, such as tract selection and choice of lease stipulations.

In addition to this general, all-inclusive provision, special procedures were included in section 307(c)(3) of the CZMA, as originally enacted, for federal license and permit activities significantly affecting the coastal zone. All such activities had to be certified by an applicant as consistent with a state's approved coastal management program. This section applied to all license and permit activities and thus applied

to Interior's and other agencies' OCS license and permit activities.

B. The 1976 Amendments

In the 1976 amendments to the CZMA, Congress supplemented these provisions with an addition to section 307(c)(3) that required consistency compliance, through use of the certification procedure, for federally permitted activities after the issuance of an OCS lease (e.g., platform placement, drilling), which activities were described in OCS exploration and development/production plans. States with federally approved coastal management programs were to review OCS plans to determine whether permit actions in such plans, if significantly affecting their coastal zone, were consistent with the requirements of the coastal program. Federal agencies were prohibited from issuing OCS permits which a state found to be inconsistent with its coastal program unless the Commerce Secretary, following an appeal by the OCS lessee, overrode the state's objection.

A question was raised by the Department of the Interior as to whether, as a result of the passage of this new provision, designated section 307(c)(3)(B), Interior's OCS pre-lease sale activities were exempted from the general federal activity consistency requirement of section 307(c)(1). Commerce objected to Interior's claim of exemption. This disagreement continued up to, and now after, passage of the Outer Continental Shelf Lands Act Amendments of 1978 (P.L. 95-372, OCSLAA).

QUESTION

The original CZMA applied to all federal activities or permitted actions. The question is therefore whether either the 1976 amendments to the CZMA or the OCSLAA exempt the Department of the Interior from the general, otherwise all-inclusive, federal consistency requirement of section 307(c)(1) of the CZMA.

CONCLUSION

Neither the CZMA, as originally enacted or as amended, nor the OCSLAA specifically exempt any federal activity

from consistency requirements. Rather, the only relevant statutory language—307(c)(1)—specifically includes all such activities in a consistency obligation. An analysis of the legislative history of the CZMA, as amended, and the OCSLAA does not reveal that Congress intended any unique exemption for Interior's OCS pre-lease sale activities.

DISCUSSION

The federal consistency requirements of the CZMA, as amended, are set forth in sections 307(c) and (d). (See Attachment I). Although the statutory provisions are set forth in five subsections, they can be divided into two primary categories: requirements on federal agencies, with respect to activities they conduct directly or support through official action, (sections 307 (c)(1) and (2)), and requirements on private applicants for federal licenses, permits or assistance (sections 307(c)(3)(A), (c)(3)(B) and (d)). As indicated in Department of Commerce final federal consistency regulations, sections 307(c)(1) and (2) encompass all federal actions other than federal license, permit and assistance activities. This includes the acquisition, utilization or disposal of land or water resources, and the adoption of formal proposals which guide or prescribe alternative uses of federal resources. See 15 CFR §930.31, 43 Fed. Reg. 10519, March 13, 1978. The Department of the Interior's OCS pre-lease sale activities fall within this area. See Steps 1-12 in Attachment II.

A Federal activity is covered by the consistency requirement if it is capable of significantly affecting a state's coastal zone. Thus, federal activities need not be situated within the boundaries of the coastal zone in order for the requirements to apply. See 15 CFR §923.33, 43 F.R. 8405, March 1, 1978. It is sufficient if they generate significant effects within the coastal zone, and primary, secondary and cumulative effects must be considered. See 15 CFR §920.21, 43 Fed. Reg. 10519, March 13, 1978.

Interior's actual pre-lease sale decisions and OCS program modification proposals confirm the relationship of OCS leasing activities to coastal zone management. In re-

cent OCS lease sales, Interior has imposed pollution control stipulations to mitigate impacts along the coastline which could be caused by the washing ashore of oil, fuel, chemical residues and toxic substances. In addition, Interior has deleted geologically hazardous lease tracts to avoid damage to rigs or pipelines which could lead to adverse impacts on coastal resources. In its September 30, 1977 proposal for "An Intergovernmental Coordinated Planning Process for the Leasing and Transportation of OCS Oil and Gas," Interior recommended the review of state coastal zone management policies to ensure that tract selection and lease stipulation decisions adequately addressed issues concerning environmental quality, use conflicts, potential hazards to pipe laying, unique resource areas and potentially affected recreation areas. Interior concluded that if the proposal were implemented, "Consistency with State coastal zone management plans would be assured." See Report at 17-18.

Except for section 307(c)(3)(B), pertaining specifically to OCS exploration and development/production plans, nothing in the 1976 CZMA amendments changed the consistency requirements of the original statute. It is an elementary principle of statutory construction that, in the absence of a clear and manifest intent to the contrary, subsequent Congressional action does not affect pre-existing statutory requirements. Therefore, there is no basis on the plain reading of the statute to exempt any federal actions, including OCS pre-lease sale activities, from the general, all-inclusive requirements of consistency provided in the original statute.

In order to determine if Congress at that time intended to modify any of Interior's consistency responsibilities, one must, of course, also look to the legislative history.

This history indicates that some members of Congress interpreted section 307(c)(3), which applied to federal license and permit applications, to include the submission of OCS lease bids. They codified this interpretation when committees of both Houses of Congress reported separate versions of amendments to the CZMA in the 94th Congress with the inclusion of the word "lease" with "license or permit" in 307(c)(3). S. 586, Sec. 102(12) (94th Cong. 2nd Sess.); H.R.

3981, Sec. 2 (15) (94th Cong. 2nd Sess.) This intent so to codify was confirmed in the committee reports. See Senate Report No. 94-277 at 19 and 36, and House Report No. 94-878 at 52.

However, on the House floor, in response to comments from sources such as Interior Department testimony, the word "lease" was deleted from the House bill. This was not to remove leasing from the requirements of section 307(c)(3), but merely to retain flexibility for full consideration of the issue in the Conference Committee. See 122 Cong. Rec. 1854-55 (March 11, 1976).

The Conference Committee essentially selected the House version, which did not expressly include "lease" as an included 307(c)(3) "license or permit." However, the Conference Committee Report assumed continued application of section 307(c)(3) federal consistency to the issuance of individual OCS leases:

> The conference substitute follows the Senate bill in amending the federal consistency requirement to section 307(c)(3) of the Coastal Zone Management Act of 1972. The Senate bill required that each Federal lease (for example, offshore oil and gas leases) had to be submitted to each state with an approved coastal zone management program for a determination by that state as to whether or not the lease was consistent with its program. House Report No. 94-1298 at 30.

The Conference Committee then divided section 307(c)(3) into two parts. Section 307(c)(3)(A) constituted the original section 307(c)(3), providing for a state consistency certification review of federal licenses and permits. Section 307(c)(3)(B) provided for a separate coordinated and consolidated state consistency certification review of all licenses and permits described in OCS exploration and development/production plans. The intent of this change was to accelerate offshore operations and reduce burdens on the *energy industry*, by eliminating state certification review under 307(c)(3) for each industry lease bid as well as for each separate, subsequent federal license and permit described in OCS plans. See Steps 13, 15 and 17 in Attachment II. Congress rather called for two industry consistency certifications at the OCS exploration and develop-

ment/production plan stages. See Steps 14 and 16 in Attachment II. See also House Report No. 94-1298 at 30-31. These changes were responsive to the Department of the Interior's expressions of concern that the proper time for "certification" by "lease applicants" should occur at the OCS plan phase. Hearings on Coastal Zone Management before the Subcommittee on Oceanography of the House Committee on Merchant Marine Fisheries, 94th Cong., 1st Sess. 187-8, 204 (1975). Neither the Administration nor the Congress considered the question of exempting the Interior Department from its OCS pre-lease sale consistency obligations under section 307(c)(1).

Comments by committee conferees and staff members at the Conference on the 1976 amendments continued the discussion of subsections 307(c)(3)(A) and (B) and the issuance of individual OCS leases. Transcript at 21, 22 and 29. Here, as during the earlier consideration by the Conference Committee, section 307(c)(1) was never addressed.

Interior argues that the apparent Congressional intent in creating a new section 307(c)(3)(B) of the CZMA was to exclude state certification review of individual industry bids and applications for a lease from section 307(c)(3). Commerce does not question that interpretation despite the ambiguous legislative history. The unclear nature of the legislative history was aptly demonstrated in the case of *New York* v. *Kleppe*, which was being litigated at the time of passage of the 1976 Amendments to the CZMA. In response to the District Court Judge's request for supplemental briefs on the impact of the 1976 CZMA Amendments, the Natural Resources Defense Council argued that Congress intended to treat leases in the same manner as licenses and permits. Interior objected and argued, through the Justice Department, that the appropriate time for imposing the (c)(3) procedures was after issuance of a lease when the lessee is ready to begin OCS operations. The Department of Justice did *not* argue that (c)(1) was inapplicable to the lease sale process. Rather, the Department's brief stated that consistency did not apply to the physical act of granting a lease. See Step 13 in Attachment II. NOAA concurs with this statement. Consistency under

(c)(3) does not apply to an industry request for and receipt of a lease, but rather (c)(1) applies to Interior's tract selection and lease stipulation decisions. The District Court Judge, in dictum, declared that OCS leases were subject to the licenses and permit requirements of (c)(3). *New York* v. *Kleppe*, D.C.E.D. N.Y., August 13, 1976, 9 ERC 1769, reversed on other grounds. The holding demonstrates that the Court was solely concerned with the application of (c)(3) to the leasing process.

Interior extrapolates the conclusion that Congress in the 1976 amendments to the CZMA repealed Interior's general responsibilities under section 307(c)(1). The Congressional intent behind the 1976 consistency amendment was to relieve industry's burden for compliance, and not to remove Interior's responsibility to comply with section 307(c)(1) during exercise of its OCS pre-lease sale activities. The plain words of the statute obviously do not support Interior's position. In fact, Interior itself concedes that there is *no* legislative support for such a position. As stated by the Solicitor's Office,

> Unfortunately, in light of the credible arguments which can be made either way, the legislative history of the 1976 amendment to the CZMA does not aid in determining whether leasing is subject to (c)(1). In fact, the question of (c)(1) applicability to leasing was nowhere discussed. Memo dated May 6, 1977, to the Interior Acting Assistant Secretary for Policy, Budget and Administration from the Acting Deputy Solicitor—p. 8.

Thus, as a matter of statutory interpretation and as a matter of logical extrapolation, there is no basis to support a contention that the plain meaning of 307(c)(1) must be disregarded. The amendment to section 307(c)(3) did not relieve Interior from its continuous responsibilities under section 307(c)(1), as originally promulgated and never changed, to undertake its OCS pre-lease sale activities in a manner consistent, to the maximum extent practicable, with approved coastal management programs.

Interior also argues that changes in a separate, although related, OCS statute, the OCSLAA, override the plain meaning of 307(c)(1). Several sections of the OCSLAA re-

late primarily to consideration of the interests of coastal states.

—New sections 11 and 25 deal with OCS exploration plans and development/production plans, respectively. Among other provisions, they essentially incorporate the language of the federal consistency provisions of section 307(c)(3)(B) of the CZMA, pertaining to federal licenses or permits for activities described in detail in such plans. In addition, section 25 provides for disapproval of a plan when activities described are not consistent with an approved state coastal management program.

—New section 18 requires Interior to prepare a five year OCS leasing program. It includes a requirement for consideration of laws, goals, and policies of affected states, and requires Interior to consider suggestions of affected states on such leasing program, and to indicate to the President why any specific recommendation of a state was not accepted. It also requires Interior as part of its leasing program to establish procedures for, among other things, consideration of the coastal zone management program being developed or administered by an affected coastal state pursuant to the CZMA. Such procedures were to be consistent with and improve upon, the existing procedures.

—New section 19 authorizes any affected state to submit recommendations to Interior regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development/production plan. It requires Interior to accept recommendations of an affected state if they provide for a reasonable balance between the national interest (based on the desirability of obtaining oil and gas supplies in a balanced manner) and the well-being of the citizens of the affected state.

—Finally, section 504 of the OCSLAA amends section 307(c)(3)(B) of the CZMA itself to modify the period for state concurrence with OCS plans for federal consistency purposes.

At the OMB "quality of life review" which took place during promulgation of the Federal consistency regulations, NOAA and Interior committed themselves to work with

the Congress during its consideration of the OCSLAA in order to address Interior's claim for an exemption. In January 1978, both agencies submitted to OMB opposing amendments to provide explicit language on this issue within the OCSLAA. OMB developed a decision document for Presidential review. Wishing to avoid conflicts and further controversy on the entire OCSLAA and particularly on proposed CZMA amendments which related to OCS revenue sharing with states, the President decided to withhold submission of an Administration amendment on the issue. Notwithstanding Administration inaction, Congress thereafter reaffirmed its intent to apply (c)(1) consistency to Interior's OCS pre-lease sale activities.

The House OCS Committee, whose version of the amendments formed the basis for Public Law 95-372, was explicit that there was no intent to change or alter the existing CZMA consistency applications or procedures except where specifically so stated:

> Except for specific changes made by Titles IV and V of the 1977 Amendments [Title IV was to amend section 308 of the CZMA, and Title V included a provision to reduce the time period for state concurrence with OCS plans under section 307(c)(3)(B)], nothing in this Act is intended to amend, modify or repeal any provision of the Coastal Zone Management Act. *Specifically, nothing is intended to alter procedures under that Act for consistency once a State has an approved Coastal Zone Management Plan.* (emphasis supplied) House Report No. 95-590 at 153, footnote.

As to the section 19 "state recommendation" procedure, no attempt was made to change the existing CZMA procedures. Section 19 was conceived as an additional protection for states. Originally drafted and promoted as a veto, it later became a "preference" or "presumption" provision. States' recommendations as to timing, location and siting of lease sales were to be accepted "unless...." Under the CZMA, state recommendations are not a prerequisite. Specific activities must be reviewed under 307(c)(1) and consistency "to the maximum extent practicable" assured. Specifically, the House Committee, whose version of section 19

was accepted by the Senate, and thus made part of the OCSLAA, stated:

> The committee is aware that under the Coastal Zone Management Act of 1972, as amended in 1976 (16 U.S.C. 1451 et seq.), certain OCS activities *including lease sales* and approval of development and production plans must comply with "consistency" requirements as to coastal zone management plans approved by the Secretary of Commerce.... [N]othing is intended to alter procedures under that Act for consistency. (emphais supplied) *ibid.*

Other references in the legislative history to coastal management programs reaffirm the clear Congressional intent not to make changes other than those specifically listed, but rather to support and build upon existing CZMA policies, programs, and consistency requirements. See Conference Report, House Report No. 95-1474 at 181 (§11); see Senate Report No. 95-284 at 77; House Report No. 95-590 at 151, 152 and Conference Report, House Report No. 95-1474 at 103, 105 (§18). See Senate Report No. 95-284 at 93, 84; House Report No. 95-590 at 167, 168; and Conference Report, House Report No. 95-1474 at 117, 118, 199 (§25).

Interior argues again, despite clear legislative language and history, that there is "repeal by implication." Interior's reasoning is that Congress knew of the disagreement between Commerce and Interior regarding the applicability of 307(c)(1) to Interior's OCS pre-lease sale activities, and yet specifically elected not to provide for explicit application of the 307(c)(1) requirement.

This argument contradicts the plain language and legislative history which supports application of 307(c)(1). Rather than repeal by implication, there is application by reconfirmation. The logical fallacy of Interior's argument is its assumption that Congress' refusal specifically to restate what was already the law constitutes acceptance of a change, which it specifically rejected. Despite the clear opportunity, Congress refrained from establishing any exception within section 307(c)(1) for Interior's OCS pre-lease sale activities. More importantly, as part of the OCSLAA Congress did, in fact, amend section 307(c)(3)(B), the very source of Interior's argument, and was again silent on the

disagreement. It could have had no better nor more appropriate opportunity to uphold Interior's claim of exemption. Interior's argument is that Congressional failure to act in the face of notice of the disagreement signifies acceptance of Interior's position. However, all tenets of statutory construction maintain that Congressional inaction demonstrates support for the continued application of the section 307(c)(1) requirement to Interior's OCS pre-lease sale activities. Those proposing an exception to the broad language of the consistency requirement have the burden of supporting that exemption, and it is not only not met but, in fact, has been outweighed by the plain words and history of the provision. Even if we assume that the statutory language and legislative history do not mandate application of 307(c)(1) to OCS lease-related activities, legislative inaction is ordinarily not an adoption or ratification by the legislature of a particular interpretation of an existing statute. Only when an interpretation has been applied consistently over a period of time by the officer or agency responsible for the statute's implementation, or by the courts, will such an interpretation be considered, and then with great hesitance. See e.g., *Kay* v. *FCC*, 433 F. 2d 638 (D.C. Cir. 1970); 2A Sutherland, Statutory Construction, 4th ed., at 261-65 (1973).

> "True, long-standing administrative interpretation of a statute, acquiesced in by all interested parties, may form the basis for an inference that the administrative interpretation is correct. However, courts are properly chary of equating mere inaction with approval in the absence of a solid foundation for the inference of conscious ratification."

Duncan v. *Railroad Retirement Board*, 375 F. 2d 915 (4th Cir. 1967).

There is here no longstanding consistent administrative interpretation of the statutory provisions in issue supportive of Interior's interpretation. Rather, the agency responsible for implementation of the CZMA, NOAA, has in fact pointedly continued to assert the clear applicability of the statutory language. There is absolutely no legal basis for reliance upon Congressional inaction as an aid to the

construction of section 307(c). *Brooklyn Union Gas Co.* v. *New York State Human Rights Appeal Board*, 41 N.Y. 2d 84, 359 N.E. 2d 393 (1976).

> "If the failure of enactment of every amendment offered for the consideration of Congress were necessarily held to shed light on the legislation sought to be amended, the search for Congressional intention would be endless and fruitless."

United States v. *Guerlain, Inc.*, 155 F. Supp. 77 (SDNY 1957).

Thus, the rules of statutory construction are supportive of the application of section 307(c)(1). Yet, it is unnecessary even to devote time to considering them at length, in light of the evident intent of Congress.

POLICY CONSIDERATIONS

It is also clear that the policies of the CZMA would be furthered by the application of section 307(c)(1) to Interior's OCS tract selection and lease stipulation decisions significantly affecting the coastal zone. Policy considerations include the following:

—The purpose of the federal consistency provisions is to provide added benefits to those coastal states that have expended a substantial effort to develop coastal programs which address national as well as state and local concerns. States with approved programs are provided with both mandatory CZMA consistency authority and discretionary OCS Lands Act (§19) gubernatorial recommendations for OCS development/production plans, and are equally entitled to dual benefits at the critical OCS lease sale stage. States are likely to question the utility of the federal CZM program if OCS leasing decisions are totally exempted from the consistency requirements.

—Application of 307(c)(1) would promote intergovernmental coordination at the earliest practicable time. Interior makes important decisions, which could significantly affect coastal states, at the OCS pre-lease sale stage. Pursuant to 307(c)(1), during the environmental impact statement process which precedes each OCS lease sale, or during other appropriate agency procedures, Interior would examine state coastal program

requirements related to pipeline corridors, areas of critical concern, water and air quality, recreation sites, marine habitat, etc., and then would select tracts and impose lease stipulations in a manner which allows energy development while conforming to coastal program requirements. Interior studies indicate that implementation of such measures at the OCS lease sale stage would minimize adverse coastal environmental and socio-economic impacts, thereby reducing conflicts with affected states.

—Application of 307(c)(1) calls for a process with built-in safeguards. As a condition of federal approval for a state's coastal program, the state must demonstrate adequate consideration of the national interest in planning for and siting of major energy facilities, including those related to OCS exploration and development. No coastal program has been approved except after critical review by affected federal agencies, *including* Interior. After federal approval, Interior's tract selection and lease stipulation decisions need only be consistent, "to the maximum extent practicable," with state programs, and any serious disagreement is subject to mediation by the Commerce Secretary in cooperation with the Executive Office of the President. Arbitrary or illegal state action could lead to federal termination of program approval and cessation of state consistency authority and, also, loss of federal monies under the Coastal Energy Impact Program. Thus, a special exemption for Interior is not warranted since the consistency privilege is exercised within a framework which shields against abusive state action.

—Failure to apply consistency to OCS tract selection and lease stipulation decisions would undoubtedly lead to conflicts with coastal states. The absence of a mandatory intergovernmental coordination process at this stage has been the primary cause of numerous state lawsuits against Interior resulting in serious delays to offshore leasing. Previous Administrations were grievously unresponsive to state recommendations concerning OCS lease sales with indifference usually justified by the position that the national interest in energy development warranted disregard for coastal concerns. If consistency is not applied at the lease sale stage,

substantial time and money will be wasted as states object, at the exploration and development/production phases, to OCS activity occurring in tracts, or subject to lease stipulations, which prove to be inconsistent with approved coastal programs. The issue was raised by Massachusetts in litigation concerning Interior's Georges Bank OCS lease sale. California is now seeking disposition of the issue prior to Interior's OCS lease sale off Southern California scheduled for June 1979, and has argued that "it is essential to us that leases be consistent with our coastal management program." Letter from the California Coastal Commission to the President, December 5, 1978. Agreement or conflict resolution at the lease sale stage will necessarily reduce friction and potential litigation at the later "active" phases, thus minimizing or eliminating the likelihood of delay for exploration and production of OCS oil and gas. Only new or significantly changed circumstances will ordinarily allow a previously determined location or lease condition to be challenged.

—Failure to apply 307(c)(1) to Interior's OCS activities would consistitute the *only* exemption to the federal consistency requirements of the CZMA, thus establishing a seriously harmful precedent for other federal activities significantly affecting the coastal zone. The exemption is particularly unreasonable in light of the fact that other Interior public land management activities which significantly affect the coastal zone (e.g., onshore oil and gas, geothermal and coal development) are subject to the federal consistency requirements. Allowing this adverse precedent to be set would encourage other federal agencies to claim implied exemptions whenever "state consultation" procedures are incorporated in legislation enacted subsequent to the 1972 CZMA. Accordingly, an exemption for Interior could be the first step towards serious erosion of the consistency provisions, and consequent intergovernmental conflicts.

In conclusion, sound policy considerations and legal analysis dictate that 307(c)(1) be applied to Interior's OCS prelease sale activities. Such application will encourage state cooperation, avoid lawsuits, and promote oil and gas development activities while minimizing adverse effects on the

coastal environment. The plain meaning of the CZMA as originally enacted and as amended, the legislative history of the 1976 CZMA amendments, and the words of the OCSLAA and its legislative history all indicate that section 307(c)(1) consistency requirements apply to OCS pre-lease sale activities. There is no legislative support for any interpretation that Interior's OCS pre-lease sale activities are exempt from the federal consistency requirement of section 307(c)(1) of the CZMA. Such exemption is inconsistent with the 1976 amendments to the CZMA. Amendments at that time dealt with section 307(c)(3), and Congress specifically did not change the applicability of section 307(c)(1). The OCSLAA also lends support to inclusion rather than exemption. That statute is silent, and the legislative history reveals that Congress intended section 307(c)(1) to continue to apply. In sum, Interior's interpretation lacks foundation in logic, law and evidenced Congressional intent.

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July 8, 1980

Cecil Andrus
Secretary of the Interior
U.S. Department of the Interior
Washington, D.C. 20240

Dear Secretary Andrus:

While we have been unable to agree in formal mediation proceedings whether Section 307(c)(1) of the Coastal Zone Management Act requires DOI to submit a consistency determination for OCS lease sales, the California Coastal Commission continues to maintain that the Final Notice of Sale is the key Federal activity which opens thousands of acres of the OCS to oil and gas development and sets in motion a series of events which have consequences in the coastal zone. Accordingly, it is the Commission's position that DOI must submit a determination that the Proposed Notice of Sale for OCS Lease Sale #53 is consistent, to the maximum extent practicable, with the California Coastal Management Program. The purpose of this letter is to formally request submittal of a consistency determination at the time of the Proposed Notice of Sale, which is scheduled for October 1980.

At the conclusion of the mediation proceedings, Secretary Klutznick directed NOAA to promulgate regulations defining the term "directly affect". The Secretary stated that the rulemaking would be guided by the opinion of former Commerce General Counsel Haslam which concluded that the CZMA "contemplates that pre-lease Sale activities as in California be subject to a consistency determination". Since it is highly unlikely that the regulatory definition will be finalized by the time of the Proposed Notice of Sale for Lease Sale 53, we believed it important to inform you of our position at this time.

Pursuant to §930.34(b) of NOAA's consistency regulations, "the consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal activity...." As stated above, we believe that the Final Notice of Sale constitutes the final approval in the case of an OCS lease sale. This is consistent with DOI's view as to the proper pre-lease activity which should be subject to consistency review. In a March 7, 1980 letter to Fran Ulmer of the Alaska Governor's Office, Deputy Assistant Secretary Heather Ross stated:

> The Department views the publication of the final notice of sale as the declaration of this "final approval". Ninety days prior to this final approval coincides with the normal publication date of the proposed notice of sale. Therefore, it is at this point that a consistency determination or a negative determination is made.

On June 18, 1980, you announced final approval of the Five-Year OCS Oil and Gas Leasing Schedule. This schedule accelerated the proposed notice of sale for Lease sale 53 several months to October 1980; the Final Notice of Sale remains at April 1981. The fact that you have accelerated the timing of the proposed notice in no way detracts from the fact that it remains the proper point for a consistency determination. The Coastal Commission submitted extensive comments, both orally at the public hearings and as a portion of the Governor's Office written comments, on the Draft EIS which detailed which basins and tracts should not be offered for lease and which stipulations should be included if the Proposed Notice of Sale for Lease Sale 53 is to be consistent with the Federally approved California Coastal Management Program (CCMP). This early notice of consistency problems of the proposed lease sale should be thoroughly discussed and analyzed in the Final EIS and/or the Secretarial Issue Document for the Proposed Notice of Sale for Lease Sale #53. Despite our legal disagreement on the requirements of §307(c)(1), a June 25, 1980 letter from Clyde Martz to myself stated that "nothing ... bars Interior from making consistency determinations in those cases where comments suggest potential consistency problems".

In addition to the program administered by the Coastal Commission, the CCMP also includes a separate segment for San Francisco Bay implemented by the San Francisco Bay Conservation and Development Commission (BCDC). BCDC both testified at the public hearings and submitted written comments on the DEIS. Since DOI anticipates that San Francisco Bay will be the staging and service area for OCS development the consistency determination accompanying the Proposed Notice of Sale must also analyze consistency with the San Francisco Bay segment of the CCMP.

We look forward to a consistency determination at the time of the Proposed Notice of Sale for Lease Sale #53 in October, and an amicable resolution of this issue.

Sincerely yours,

/S/

MICHAEL L. FISCHER
Executive Director

cc: Heather Ross
Clyde Martz
Michael Glazer

APPENDIX C

C.R. 19, Def. Ex. L-F

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON D.C. 20240

October 22, 1980

Mr. Michael L. Fischer, Executive Director
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 941105

Dear Mr. Fischer:

In your letter of July 8, 1980, you requested a consistency determination for the Proposed Notice of Sale for OCS Lease Sale No. 53. In accordance with the Section 307(c)(1) Federal consistency provisions of the Coastal Zone Management Act (CZMA) and Subpart C of 15 CFR 930, we have assessed the possible effects of the Department's prelease activities associated with OCS Lease Sale No. 53 and found that none directly affects the California coastal zone. I am hereby providing you notification of these findings in accordance with 15 CFR 930.35(d). The reasons for this negative determination are set forth below and in Attachment 1.

We have determined, after a careful review of the Proposed Notice of Sale, that no lessee will be required, as a result of and as the next step following lease award, to undertake an activity with coastal zone effects. In all cases the lessee and the Deputy Conservation Manager must first exercise discretion by making subsequent decisions to initiate for approval and to approve specific action proposals before the coastal zone could be affected. Therefore, we have found, in light of the April 20, 1979, Opinion of the Department of Justice, the October 10, 1979, Opinion of our Solicitor regarding the meaning of the Section 307(c)(1) requirement, and the facts associated with the proposed lease sale, that none of the terms and conditions of Lease Sale No. 53 as reflected in the proposed notice of sale nor the subse-

quent award of leases will directly affect the California coastal zone. The details of this finding as it applies to the proposed decision to lease the set of tracts under the specified stipulations are discussed in Attachment 1.

In further response to your July 8, 1980, letter, I would like to indicate in more detail why I believe a consistency determination is not required for the pre-lease activities for OCS Sale No. 53 and why I believe it would not be constructive or meaningful to make one.

I believe that this finding is in keeping with the intent of the Section 307(c)(1) provisions and also represents good public policy. An assurance of consistency by the Secretary of Interior under 307(c)(1) is required only for Federal activities which directly affect the coastal zone. The effects on coastal land and water use which may arise from post-lease activities (which are subjects to Section 307(c)(3) consistency procedures) are not, for Sale #53, direct effects of leasing decisions but rather the effects of subsequent decisions and events. Thus, these post-lease operational activities are not subject to a consistency determination under section 307(c)(1).

Section 307(c)(3) includes provisions to assure that no OCS operational activity will be inconsistent with the California Coastal Management Program (CCMP). Through your authority under this section, the California Coastal Commission (CCC) can, barring the exceptional case of an override by the Secretary of Commerce under Sec. 307(c)(3)(B)(iii), prevent or require the modification of any of the federally permitted OCS operational activities, and their associated facilities, which affect any land use or water use in the coastal zone and are found to be inconsistent with the CCMP. Through this statutory framework, California is assured that, by exercise of its own authority, only consistent activities will occur after lease award. It does not have to reach out, through Federal pre-lease consistency responsibilities, to limit sale proposals and thereby preclude energy development opportunities before specific activities are proposed or their specific coastal effects evaluated.

Your request for a consistency determination for OCS Sale No. 53 pre-lease activities appears to be based on your agency's view of the term "directly affecting" as meaning "sets in motion a series of events which have consequence in the coastal zone." The result of this interpretation is that all effects on the coastal zone of both pre-lease and post-lease activities must be considered as "direct". Using this logic, the word "direct" would be a meaningless modifier since this interpretation would require that the consistency of post-lease OCS activities be assured under both Sections 3207(c)(1) and 307(c)(3), leaving no distinction between these two requirements. We believe this interpretation was not the intent of Congress and would not be workable.

The Department has carefully analyzed the June 4, 1980, CCC comments on the DEIS and your testimony at the EIS hearing in San Francisco on June 23, 1980, as well as all the other comments and views which were provided to us. Those materials have been of great assistance in apprising us of your views and concerns. The degree of detail you provided allows us to carry out our responsibilities with full understanding of your recommendations. A description of the measures we have taken which we believe are responsive to your concerns is included in Secretary Andrus' letter to Governor Brown (Attachment 2).

Sincerely,

/s/ _____

Assistant Secretary—Policy, Budget and Administration

Attachment 1
APPLICATION OF CONSISTENCY REQUIREMENTS TO CENTRAL AND NORTHERN CALIFORNIA OCS SALE PRE-LEASE ACTIVITIES

In order to carry out its responsibilities under Section 307(c)(1) of the CZMA, the Department of the Interior has reviewed its pre-lease activities which will culminate in a Final Notice of Sale for Central and Northern California OCS sale #53. Based on the content of the proposed Notice of Sale, which includes the proposed stipulations and set of tracts to be offered for sale, the Department has found that neither the decisions to impose the stipulations nor the decisions concerning sale configuration directly affect the coastal zone of California. These findings are discussed below.

STIPULATIONS INCLUDED FOR THE CENTRAL AND NORTHERN CALIFORNIA OCS SALE

In general, lease stipulations impose legal requirements. However, it is necessary to examine each stipulation in light of the interpretation of pre-lease consistency requirements given in the October 10, 1979, Solicitor's opinion to determine if it causes a direct effect. Each stipulation has been analyzed in this manner. The rationale for the findings for each is as follows:

Stipulation 1 states that the Deputy Conservation Manager (DCM) may require environmental surveys on certain tracts if he has reason to believe biological populations or habitats exist and require additional protection. Upon making a finding of the existence of special biological resources, the DCM shall give the lessee written notice of the invocation of this stipulation. Depending on the results of the survey, the lessee may be required to take certain actions to avoid biological damage. However, the imposition of this stipulation is not an activity directly affecting the coastal zone since the DCM must make a decision subsequent to the lease sale as to whether and when to invoke this stipulation and so inform the lessee before the surveys would be initiated. Secondly, the stipulation indicates that if during OCS operations a significant biological resource is discov-

ered, reasonable efforts will be made to preserve and protect the resource. This part of the stipulation does not come into force until after the DCM decides to approve the operational plans, thus, its imposition is not an activity directly affecting the coastal zone.

Stipulation 2 states that the DCM may require the lessee to conduct remote sensing surveys to ascertain whether cultural resources exist on the leasehold which may be affected by lessee operation. After assessment of the survey, the stipulation requires lessees to report any significant historic or archeological discoveries which are made during the conduct of operations on an OCS leasehold. The lessee is directed to make every possible effort to preserve and protect the discovery until directions are received by the DCM. No activity is required or prohibited which could have a physical impact on the State's coastal zone. Thus, the imposition of this stipulation is not an activity directly affecting the coastal zone.

Stipulation 3 provides that the DCM shall not allow certain OCS operational activities in potential geologic hazard areas unless the lessee can demonstrate that the proposed operation can be conducted safely on the lease or from areas adjacent to it. The invocation of this stipulation is dependent on a subsequent decision by the DCM and therefore, is not an activity which directly affects the coastal zone. If exploratory drilling operations are subsequently allowed in these areas, site-specific surveys shall be required and further, if emplacement of structures or seafloor wellheads for production are allowed, all unstable areas must be mapped. In all cases events and decisions subsequent to lease issuance must occur first, namely the submission to and the approval of an exploration plan by the DCM. Therefore, imposition of these parts of Stipulation 3 is also not an activity directly affecting the coastal zone.

Stipulation 4 requires certain lessees to cooperate with the appropriate military agency in the conduct of OCS related activities. No activity is required or prohibited which could have a physical effect on the State's coastal zone. Thus, the imposition of this stipulation is not an activity directly affecting the coastal zone.

Stipulation 5 requires certain lessees to assume all risks of damage or injury to persons or property in cases involving the U.S. Government related to programs and activities of the Western Space and Missile Center, Pacific Missile Test Center, or other appropriate military agencies. Such an agreement requires the lessee to take no activity which would have a physical effect on the coastal zone of California and thus is not an activity directly affecting the coastal zone.

Stipulation 6 requires pipelines to shore under certain circumstances and specifies that they be designed and constructed to provide protection from certain hazards. However, before such a pipeline could be built, a decision by the lessor as to its net social cost, a judgment of its technical feasibility, and a decision to issue a permit for its construction must occur. Thus, the imposition of this part of the stipulation is not an activity directly affecting the coastal zone. In those cases where surface vessels must be used to transport hydrocarbons, such as in the case of an emergency, the stipulation further requires that all vessels used must conform with all standards pursuant to the Port and Tanker Safety Act of 1978 (P. 95-474). The stipulation results in no immediate activity but is only applicable after a subsequent events and decisions by the DCM related to the exploration phase of OCS oil and gas operations. Therefore, the imposition of this part of the stipulation is not an activity directly affecting the coastal zone.

Stipulation 7 requires that subsea protrusions related to OCS activities be protected, if feasible, against commercial trawl gear. Latitude and longitude coordinates, as well as water depths, of structures such as well heads and temporary abandonments must be submitted to the DCM. However, the stipulation is not effective immediately since a decision to issue permits for construction of pipelines and other structures must occur first. Therefore, the imposition of this stipulation is not an activity directly affecting the coastal zone.

Stipulation 8 requires lessees to include proposed fisheries training programs in their exploration and development plans for review and approval by the DCM. Since the prep-

aration and submission of these training programs cause no physical effects on the coastal zone and since they must be approved by the DCM before they will be conducted, this stipulation is not an activity directly affecting the coastal zone.

Stipulation 9 provides for the reduction of the royalty rate by the Director of the Geological Survey under some circumstances. Since the stipulation does not take effect until the Director decides to initiate such a reduction and since changes to royalty rates have no effect on the coastal zone, the imposition of this stipulation is not an activity directly affecting the coastal zone.

Final Configuration of Lease Tracts

In addition to stipulations, the Secretary's decision to issue the Final Notice of Sale for the Central and Northern California OCS Sale will identify exactly which tracts will be offered for sale. This decision is not an activity directly affecting the coastal zone because no changes to coastal resources or physical impacts on the coastal zone are possible without subsequent decisions and actions.

In addition, the October 10, 1979, Solicitor's opinion indicates that "... we do not believe that remote or highly speculative coastal zone impacts, such as alleged changes in property values or possible effects on the potential use of a given area within the coastal zone, are impacts which trigger the consistency requirements of §307(c)(1)." Thus, any such effects, even if it could be ascertained that they indeed were motivated in part by OCS Lease Sale No. 53 pre-lease activities, should not be considered as direct effects on the coastal zone.

CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105—(415) 543-8555

California Coastal Commission Resolution on the Secretary of Interior's Proposed Notice of Sale for OCS Lease Sale #53

Adopted December 16, 1980

The Commission commends Secretary Andrus for deleting the four northern basins in proposed OCS Lease Sale #53. The Secretary has been very responsive to State and local expressions of concern. We strongly support Secretary Andrus' decision to exclude these four basins from the Call area in Lease Sale #73, avoiding a frustrating repetition of analyses and debates recently experienced in the process leading up to this proposed OCS Lease Sale #53.

Regarding the Santa Maria Basin, the Commission continues to recommend that leasing be delayed until important studies underway for that area can be completed and incorporated into decisions to offer certain tracts for lease. Several persons testified on the need for results of these studies before a leasing decision is made, including San Luis Obispo Council of Governments (SLO COG). These studies are (1) an oceanographic and meteorological study of Offshore California (wind and currents) necessary for accurately determining oil spill trajectories and conducting an oil spill risk analysis; (2) the Geologic Hazards Study for Central and Northern California; and (3), the Coast Guard Study of Vessel Traffic and Port Access Routes along the central and northern California coast. Information from each of these studies could be applied on a tract by tract basis in the Santa Maria Basin to determine which tracts present the greatest potential for oil spills, vessel traffic conflicts, or oil reaching sensitive biological resources in nearshore or onshore areas.

In addition to the need to complete the above studies, the Commission agrees with Friends of the Coast that the sale should be delayed because of the numerous tracts still available to the industry for OCS oil and gas exploration and development in the Santa Barbara Channel, just south

of the Santa Maria Basin. The oil industry has been dilatory in exploring the leases purchased in 1968 and 1975 in and around the Channel and is just beginning to explore tracts purchased in Lease Sale #48, held in June 1979.

If Interior decides to go ahead with Lease Sale #53 as scheduled in May 1981, the Commission recommends that the following tracts be deleted from the sale: 129-155, and 158-161. These 31 tracts or portions of these tracts are within 12 miles of the range of the threatened southern sea otter. The sea otter spends almost 100% of its time in the water, rarely hauling out. Breeding and pupping take place in the water. Given the otters' extreme vulnerability to oil spills and the considerable threat of oil spills in the Santa Maria Basin, the Commission concurs with Friends of the Sea Otter and the California Department of Fish and Game that the risk to the otter population is too high to warrant leasing of these tracts.

Furthermore, because there is an inconsistency between the California Air Resources Board regulations, as incorporated in the California Coastal Management Program, and the regulations and proposed regulations of the U.S.G.S. as they relate to air quality, the Commission believes that permits are less likely to be granted if the regulatory scheme is not adjusted to adequately address the State's concerns in this area. Therefore, the sale should be delayed until such time that the Department of Interior delegates air quality permit and enforcement responsibilities to CARB and local air districts or adopts a lease stipulation incorporating the recommendations made by the CARB in these proceedings.

The Commission expresses its strong support to the Governor for the lease stipulations as proposed by the San Luis Obispo County Council of Governments and Santa Barbara County. The Commission particularly recommends the Governor accept the Santa Barbara County stipulations with respect to protecting the biological environments and avoiding geoplogic hazards.

Many citizens and groups testified before the Commission at the December second meeting in Monterey on the potential hazards to the environment, indicating a great

deal of concern for the San Luis Obispo County area. Much of the testimony has been summarized in the staff analysis and some of it has been attached. Those who testified were: Ronald De Carli (San Luis Obispo County and Council of Governments), Kurt Kupper (Supervisor San Luis Obispo County), Dr. Thomas Williams (sea otter researcher), Deborah Nelson (San Mateo County), William J. Francis (Monterey Penisula Audubon Society), Jan Clucas (San Luis Obispo League of Women Voters), Donna Di Rocco (various environmental groups in San Luis Obispo County), Tom Silva (American Cetacean Society), Beryl Reichenberg (Clean Air Coalition), David Bockman (for John Ashbaugh of the Sierra Club), Peter Morrison-Meshot (Harbinger Communications and Save Our Shores), Carol Fulton (Friends of the Sea Otter), Julie Bott (Friends of the Coast), Connie Parrish (Friends of the Earth), Richard Charter (Local Government Coordinator for Lease Sale #53), Bob Hardy (Department of Fish and Game sea otter specialist), H. Meyer, and M.H. Graham (Morro Coastal Audubon Society). The Commission appreciates the informative and useful testimony offered by these people.

The Commission recognizes that major conflicts could arise between OCS petroleum exploration and development activities and the biological and recreational resources in the Basin area. Commercial fishing areas, seabird foraging and resting locations, recreation spots, and whale migratory routes are important examples, as the American Cetacean Society and the Morro Coast Audubon Society testified.

The major risk to these resources is the added potential for major oil spills that could result from offshore oil development and transportation. This risk would be added to the existing risk of oil spills from coastwise tanker traffic and from the operation of the six marine oil terminals in Estero and San Luis Obispo Bays. The Commission agrees with the testimony from San Luis Obispo County that existing oil spill response capabilities in most weather conditions cannot adequately contain and clean up a spill. The California Coastal Act recognizes this inadequacy. It states that oil development may be permitted to maintain a

healthy economy even though the development may pose added threats to coastal and marine resources protected by the Coastal Act policies.

The Commission is extremely concerned about the adequacy of oil spill response capabilities. The Commission has used Coastal Energy Impact Program funds for an evaluation of these capabilities. The Commission will use the results of this evaluation, due early in 1981, to assure through consistency reviews that the best available, state-of-the-art oil spill response equipment and systems are in place if there is offshore exploration and development in the Santa Maria Basin.

The Call for Nominations for this Sale included ten million acres offshore the California coast. In response to State comments, Interior deleted tracts offshore the Ano Nuevo Ecological Preserve and offshore Trinidad at that time. The federal Environmental Impact Statement analyzed 243 tracts, most nine square miles in area. Secretary Andrus' Proposed Notice of Sale deletes more than half these tracts, leaving 113 tracts in this proposed decision. This proposed decision did delete all the tracts recommended to him for deletion by the State and the Coastal Commission in commenting on the Draft Environmental Impact Statement. The Commission's position was that the middle three offshore basins should be deleted because the estimates of petroleum resources were low and the environmental risks to these scenic, rural areas without industrial or petroleum development were high.

The Commission is recommending further deletion of 31 tracts at this time, in spite of the ignored request for delay, for four reasons: (1) the Secretary of Interior has decided in both the National Five Year OCS Leasing Schedule and in his proposed decision on OCS Sale #53 not to delay this Sale; (2) the U.S. Fish and Wildlife Service biological opinion on the risks to the sea otter was not available until after the environmental statement hearings; (3) weighing the national interest in protecting the small population of the threatened southern sea otter against the petroleum resource potential of the 31 tracts in the northern part of the Santa Maria Basin comes out in favor of the threatened sea

otter, and (4) the EIS lacked adequate baseline data and analysis. The phrase "national interest" is not just a code word for "oil production". The national interest also includes protecting other valuable marine and coastal resources such as endangered species, shipping, commercial fishing, and important habitats for marine mammals and seabirds.

The Commission is not recommending further tract deletions, although other State agencies and a number of parties who testified at the Commission's public hearing urged further deletions. These urgings included recommendation to delete tracts to protect air quality, commercial fishing areas, areas to which the sea otter may migrate in future years, beach recreation areas, rocky intertidal habitats, and rocks and beaches where marine mammals and seabirds may rest at different times of the year. The Commission recognizes that offshore oil development may pose risks to all these resources. These concerns are addressed in the Interior Department's lease sale stipulations and OCS Orders governing all operations on the OCS and would be addressed through Coastal Commission consistency reviews and local government permit proceedings on any proposed onshore support facilities.

Under the Coastal Act the Commission has been consistent in objecting to proposed offshore oil development within specific buffer zones around special sensitive marine mammal and seabird breeding areas, such as the Channel Islands. Objecting to development near the breeding sea otters is consistent with these positions. The Commission has balanced the national and State interest in domestic oil production with the risks to these breeding areas and has determined the balance has favored protection. The President has recognized this in designating the Santa Barbara Channel Islands Marine Sanctuary. But the Commission and the State have not objected to offshore oil leasing in San Pedro Bay, in the Santa Barbara Channel, and in the ocean area to the west of Point Conception just south of the Santa Maria Basin, even though oil spills from those areas could affect a wide range of coastal and marine resources.

The Commission is deeply concerned about protecting the many valuable coastal resources along the northern Santa Barbara County and San Luis Obispo Bay area coast, including the Nipoma and Guadalupe Dunes, Avila State Beach, the rich agricultural lands in the Santa Maria River Valley, the commercial and recreational boats at Port San Luis, and the views from Pismo Beach. But the Commission is not recommending deleting more than 31 of the 113 tracts on the Santa Maria Basin OCS for the following reasons. One is that the petroleum potential for those 82 remaining tracts is high, as they are a continuation of the already producing Santa Maria Basin onshore. The Commission recognizes that both the nation and the State of California import about half their oil supplies and that slowing the decline in domestic oil production through development of new OCS areas can be in the national interest.

Second, the Santa Maria Basin onshore is already an oil-producing area, including production from the Guadalupe Oil Field in the coastal zone. This part of the coastal zone has a refinery, marine oil terminals and oil storage areas, and an onshore pipeline network.

Third, the State's policy is that only offshore areas can be leased where pipeline transportation to market could be feasible. The Commission assures the Interior Department that the feasibility of pipeline transportation of oil would be a major consideration in any permit or consistency review of proposed offshore development in the Santa Maria Basin.

The Commission determines that deleting the 31 northern tracts in the Santa Maria Basin is necessary for the Lease Sale to be consistent with the federally approved California Coastal Mnagement Program. This does not imply that all development of the other 82 tracts would be consistent, only that there are not the reasons, on balance, at this time under the Management program to determine that there is no way to develop those tracts consistent with the policies of the California Coastal Act.

The leasing of OCS tracts adjacent to State tidelands could result in drainage of the State's petroleum resources, forcing petroleum development by the State Lands Commission. The Commission recognizes that such tideland de-

velopment could threaten coastal and marine resources. This threat may not be consistent with the California Coastal Management Program.

The Commission is strongly concerned about the cumulative impacts from potential petroleum development in the Santa Maria Basin added with developments in the Santa Barbara Channel area on existing leases.

CONSISTENCY

The Coastal Commission continues to maintain its position that a decision to offer tracts for lease directly affects the coastal zone and therefore requires a determination of consistency with the California Coastal Management Program by the Interior Department. Interior did not submit a consistency determination. Instead the Commission received a "negative" determination with the Proposed Notice of Sale, even though the decision includes leasing 600,000 acres, three to twenty-seven miles offshore the California coast, for oil and gas development. The Commission has disagreed with Interior's position on lease sale consistency through Lease Sale #48 and through formal mediation under the auspices of the Secretary of Commerce.

The Commission continues to believe that Interior's failure to issue a consistency determination with the Proposed Notice of Sale is in violation of Section 307(c)(1) of the Coastal Zone Management Act. Thus, even though the Commission is pleased that Secretary Andrus has deleted the middle basins and the Eel River Basin from the Proposed Notice of Sale, the Commission continues to believe this decision should have been accompanied by a consistency determination.

The Commission now states that leasing within 12 miles of the Sea Otter Range in the Santa Maria Basin would not be consistent with the CCMP. Any attempt to explore or develop these tracts will face the strong possibility of an objection to a consistency certification of the Plan of Exploration or Development by the Commission.

Finally, if the Final Notice of Sale reinstates any of the four northern basins and does not include a consistency determination by the Interior Department, the Coastal Com-

mission will initiate legal actions to enforce what it believes to be the clear requirements of the Coastal Zone Management Act.

STATE OF CALIFORNIA
GOVERNOR'S OFFICE
SACRAMENTO 95814
916/445-2843

December 24, 1980

EDMUND G. BROWN JR.
Governor

The Honorable Cecil Andrus
Secretary of the Interior
Interior Building, Room 6151
18th & C Streets, N.W.
Washington, D.C. 20240

Dear Cece:

Enclosed are my recommendations relating to Outer Continental Shelf Lease Sale 53. While I am deeply appreciative of your decision to remove the four northern basins from Lease Sale 53, I am requesting that you delay Lease Sale 53 until crucial studies of geologic hazards, wind and currents, port access and marine traffic routes and marine mammal, sea bird and other coastal habitats are completed. I do not believe that at this time adequate information exists to proceed with the sale.

As you are aware, it has been the policy of my Administration that the development of the OCS should only occur where the resource is sufficient to justify pipeline transportation of produced oil and gas to refining and processing centers. In addition, California strongly objects to including in OCS sales those areas where information is insufficient to adequately evaluate the economic, environmental, and social impacts of leasing or where the known risks to the environment, the existing economy or to marine traffic are high.

Of particular concern is the absence of federal regulations adequate to protect California onshore air quality. California and affected local air pollution authorities have repeatedly stated that DOI's regulations on air quality will cause San Luis Obispo and Santa Barbara Counties to vio-

late the National Ambient Air Quality and State standards for ozone. Included in the enclosed recommendations are two options; either will enable leasing to proceed without sacrificing onshore air quality.

Regardless of when Lease Sale 53 occurs, I am also requesting that you delete tracts 129 through 155, and 158 through 164 inclusive. These tracts are directly seaward of the habitat, breeding and food supply areas of the Southern Sea Otter. The otter, a threatened species, is extremely sensitive to the effects of oil. These tracts also include valuable sea bird and sea mammal habitat, rocky intertidal and subtidal zones, commercial and sport fisheries, and recreational areas. Moreover, the area is geologically unstable, increasing the likelihood of OCS accidents. Leasing of these tracts would be inconsistent with California's federally approved Coastal Plan.

It should be noted that I have recommended for deletion only those tracts where multiple use conflicts exist and where leasing presents an unacceptable risk now and in the future. For other tracts where there are uncertainties, I am recommending lease stipulations which institute special protection measures but allow exploration and development to proceed. I also recommend in a proposed lease stipulation that I be consulted prior to USGS decisions regarding the timing and location of OCS activities which may significantly affect coastal and onshore social, economic, and environmental resources.

I feel my recommendations provide reasonable mechanisms to ensure the balance of national and regional interest which Congress intended. Should you or your staff have questions, please contact Ms. Deni Greene, at 916/322-2318.

Sincerely,

/s/

EDMUND G. BROWN JR.
Governor

STATE OF CALIFORNIA
GOVERNOR'S RECOMMENDATION
in response to
DOI Proposed Notice of Sale
Lease Sale #53

INTRODUCTION

California's policy, as Governor Brown has repeatedly stated, including at his meeting with Secretary Andrus at their May 30, 1980 meeting, is that development of the OCS should only occur where the resource is sufficient to justify pipeline transportation of produced oil and gas to refining and processing centers. In addition, California strongly objects to including in OCS sales those areas where information is insufficient to adequately evaluate the economic, environmental and social impacts of leasing, or where the known risks to the environment, the existing economy or to marine traffic are high.

California agrees with and applauds the Secretary's statement issued with the Proposed Notice of Sale for Sale #53, "deletion of the three central basins represents his best judgment as to the balance between our continuing need for domestic sources of energy and other important considerations including the preferences and well-being of people in coastal areas who may be affected by offshore oil and gas activities." We also agree that the Eel River Basin should be exluded for those same reasons, as well as for the inadequate analysis of oil related impacts in the EIS.

California recommends that the decision to delete the Eel River, Pt. Arena, Bodega and Santa Cruz Basins be sustained in the Final Notice of Sale for Sale #53. We also also urge that they be deleted from the Tract Selection for Sale #73 which is now beginning, and all future sales on California's OCS. These four basins include relatively insignificant oil and gas resource potential but extremely valuable marine and coastal resources and dependent fishing and tourist industries. The renewable resources of California's northern Coast must not be sacrificed for minor, nonrenewable oil and gas development. The Secretarial Issue Document (SID) highlights the minimal benefits that may

result from leasing these areas: "The main benefit of proceeding with Sale 53 are (sic) the savings from producing oil and gas domestically rather than purchasing equivalent imports." (page 15). As uncontrolled oil OCS production will sell at or near world prices with little or no savings achieved. Also, as we have frequently pointed out, due to the lack of transportation to move western oil east and lack of processing facilities for heavy oil, west coast production is unlikely to back out foreign imports to any substantial degree.

Further, the adverse impacts to the region as a result of the Sale (listed at page 16, item C of SID)

—commercial fishing
—recreation and aesthetics
—socioeconomic systems
—marine and coastal ecosystems
—archaeological and cultural resources
—ports and navigation
—air quality
—water resources

have not been adequately evaluated as required by NEPA. The USGS's revised resource estimates, not considered in the EIS, radically expand the potential level, extent, and length of development activity which could occur in the Sale 53 area. California believes that the lack of critical information and of an adequate Environmental Impact Statement makes a sustainable decision impossible. Critical studies only now underway include:

(1) West Coast Meteorological Buoy Monitoring Network (wind and ocean currents) necessary for accurately determining oil spill trajectories and conducting an oil spill risk analysis, (due 12/83);

(2) Geologic Hazards Study for Central and Northern California, (publication expected 1/81 but not evaluated in the EIS);

(3) Coast Guard Study of Vessel Traffic and Port Access Routes along the Central and Northern California coast, (no completion date available);

(4) Marine Mammal and Sea Bird Study for Central and Northern California, (completion of three year study due 10/83);

(5) Northern California Risk Assessment to Marine Coastal Habitat, (due 12/81);

(6) Sea Bird Oil Behavior Study, (draft due 1/82); and

(7) Commercial and Sports Fishery Oil Toxicity Study, (draft due 8/81).

The results of these studies must be applied on a tract-by-tract basis in the Santa Maria Basin to adequately determine which tracts present the greatest potential for oil spills, vessel traffic conflicts, or oil spills reaching sensitive biological resources.

Protection of onshore air quality is an issue of considerable concern to California. As you are undoubtedly aware, the federal Environmental Protection agency has imposed sanctions on California under the Clean Air Act. California does not believe that the Department of the Interior is presently able to evaluate and prevent significant onshore air quality impacts from emissions associated with the exploration and development of the OCS off our coast. The DOI, based on inadequate data and a misinterpretation of existing conditions has reached incorrect conclusions regarding the measures necessary to protect coastal air quality. Based on these incorrect conclusions the DOI proposed to rely on inappropriate, inadequate regulations adopted by the USGS for control of air emissions. California has repeatedly stated that the proposed regulations published March 7, 1980 and not yet finalized, are fundamentally inadequate for the following reasons:

—the regulations allow uncontrolled emissions of ozone;

—the regulations allow uncontrolled emissions of volatile organic compounds (VOCs), which are precursors of ozone;

—the regulations will result in violations of the National Ambient Air Quality and State standards for ozone; and

—the regulations fail to consider cumulative impacts.

RECOMMENDATIONS

Pursuant to Section 19 of the Outer Continental Shelf Lands Act Amendments, California makes the following recommendations regarding the size, timing, and location of

the proposed sale. California's recommendations, prepared by the Office of the Governor in consultation with state agencies and local government, represent a balance between development of oil and gas resources and the well-being and preferences of citizens of California.

1. *Delay the Sale*

a) Pending completion of necessary studies, there is inadequate information to support a decision to lease. Prior to Sale 53, studies and findings must be completed and incorporated in an updated environmental document and risks of unavoidable, irreversible impacts must be minimized or mitigated with special protective measures. Without a delay, it is not possible to ensure that the public trust is fulfilled and that the Congressionally mandated balancing of the National interest and the well-being of citizens of the affected State is accomplished.

b) Adequate measures to protect onshore air quality must be in place before a sale is held.

California offers two options for providing adequate air quality protection:

OPTION #1:

The DOI and USGS shall negotiate an agreement with the CARB and affected local air pollution control districts transferring to them all air quality permit responsibilities, authority, and enforcement jurisdiction for Lease Sale #53 which the aforementioned federal agencies now have or claim to have under existing law; or

OPTION #2:

Adopt California's proposed lease stipulation No. 12 which specifies air quality protection measures necessary to prevent violation of onshore air quality standards. (All of California's proposed stipulations follow below.)

Adoption of either option by the Department of the Interior will enable leasing to proceed without sacrificing onshore air quality.

2. Regardless of when Lease Sale 53 occurs, delete Sale Tracts 129 through 155 and 158 through 164 inclusive. Leasing of these tracts is an unacceptable risk now and in

the future, and would be inconsistent with California's federally approved Coastal Plan. Deletion of these tracts is necessary to protect:

—threatened sea otters and their habitat, 129-161
—valuable sea bird roosting, nesting and feeding areas, 129-161
—rocky intertidal and subtidal zones, 129-161
—other marine mammals (e.g., seals, sea lions), 129-161
—state petroleum reserves in critical habitat areas, 129-161
—recreational areas, 129-161
—Commercial and sport fisheries, 131, 138, 141-143, 145-147, 148-151, 154-155, 160-161
—geohazards in nearshore critical habitat areas, 131, 134, 138, 146-147, 151, 152, 161-164
—port access and navigational safety, 129-134, 162-164, 158-160, 154-155.

Detailed summaries of the material supporting these deletions is included below. Additional detail can be found in California's comments on the Draft and Final EIS and in State agency comments on the Proposed Notice of Sale, which are attached as Appendix A.

3. Institute the Following Special Lease Stipulations:

Information available clearly supports implementation of proposed stipulations to ensure appropriate measures during OCS activity in the Santa Maria Basin. Stipulations are summarized here with full text attached under Stipulations section below.

1) Biological Stipulation

This standard stipulation has been modified for Sale 53 to ensure that, should the Sale occur prior to completion of BLM Marine Mammal and Sea Bird Studies in October 1983, surveys will be done prior to siting OCS structures to identify and protect significant biological resources. Should such resources be identified we recommend consultation with the Governor prior to any decision regarding disposition.

2) Cultural Resource Stipulation

California recommends that this standard stipulation be modified only to provide that the Governor may notify the DCMOFO of known cultural resources, thereby triggering application of the stipulation.

3) Geologic Hazards Survey Stipulation

California supports the stipulation in the Proposed Notice of Sale, and recommends that it also apply to tracts 179-180, 185-186, 194, 200-201, 206-208, 212-214, 219-222, 225 due to potential slumping and unstable slopes.

4) Military Stipulation—Acceptable as proposed.

5) Military Stipulation—Acceptable as proposed.

6) Pipeline Stipulation

Provides that pipelines will, to the maximum extent practicable, be used to transport production and describes the procedures for determination of routes.

7) Wells and Pipelines Stipulation

Provides (a) design of equipment and facilities to prevent damage to fishing gear; (b) procedures for reporting locations of structures which are potential obstructions to fishing gear; (c) requires that reporting include Loran C fixes; and (d) requires significant sea floor disturbances be recontoured to minimize conflicts to fishing gear.

8) Support as proposed—Fisheries training program designed to minimize conflicts of OCS operations with fishermen.

9) Support as proposed—Specifies royalty structures and applications.

10) Air Quality Stipulation

This stipulation is proposed to implement air quality protection under California's Option #2 as described above, and delineates the control requirements and procedures necessary to avoid violation of onshore air quality standards. This stipulation shall apply to all leases.

11) Sea Otter Stipulation

This stipulation shall apply to all leases issued for Sale 53. It provides that prior to approval of exploration plans lessees shall reach agreement with USFWS to fund meas-

ures necessary to ensure that survival of the Southern Sea Otter is not jeopardized by OCS development.

12) Seasonal Drilling Stipulation

Stipulation is offered for tracts 201-203, 207-209, 214-216, 221-223, 227-229, 232-234, 235-238, 239-243 where drilling and workover operations between December 1 and April 1 would constitute undue risk to concentrated sea otter populations (which are expanding into this prime habitat) and gray whales and young calves which migrate north during winter. Winter conditions make oil spill containment impossible in this area.

13) Tidelands Drainage Protection Stipulation

Prohibits drilling within one mile of State tidelands seaward boundary to prevent drainage of oil from State tidelands.

SUMMARY OF CALIFORNIA'S CONCERNS

The recommendations presented above are based on the findings of State and local agencies during the OCS planning process for Sale #53 and on review of regulations pertinent to the Sale. Major concerns and issues are briefly summarized here, but California requests that all State and local government comments included in Appendix A and listed in Appendix B be incorporated by reference as part of this submittal.

- Air Quality

At every opportunity, California has explained, in considerable detail, why the USGS regulations do not protect California from significant adverse air quality impacts due to OCS activities (see Appendix A). The DOI has not responded to most of California's concerns.

Sale 53, if carried out pursuant to present USGS air regulations, will result in significant adverse air quality impacts onshore. Our concerns center upon lack of control of:

—ozone emissions;
—volatile organic compound emissions;
—likely violation of National Ambient Air Quality and State Standards for ozone and resultant nonattainment status for San Luis Obispo and Santa Barbara Counties;

—lack of cumulative review.

California's proposed Option #1 has the advantage of relying on state and local personnel who have extensive expertise and experience in air quality permit processing, source testing and enforcement. It makes little sense, from the standpoint of government efficiency, to insist that the USGS devote resources and manpower in an attempt to duplicate activities which state and/or local government agencies are already trained and qualified to do.

Furthermore, delegation to state and local air regulatory agencies or adoption of the proposed stipulation would eliminate existing state-federal conflict under the "consistency clause" of the 1972 Coastal Zone Management Act, (as it affects air quality). The delegation would also ensure that onshore and offshore sources are treated in a consistent manner. This should substantially reduce the likelihood of delays in OCS energy development due to litigation.

California's experience has shown that OCS development can proceed in an expeditious and reasonable manner under state and local supervision. The mitigation agreements voluntarily entered into between California and the industry concerning Exxon's Hondo development, Chevron's Platform Grace, and Shell's Beta Unit all demonstrate that the national interest in energy development can be satisified while, at the same time, the State's interests in the health and welfare of its citizens are protected.

• Oil Spills

California has evaluated available information on oil spill probabilities and trajectories as well as containment and clean up capabilities in the conditions prevalent in the Santa Maria Basin. We conclude: (1) due to questionable data, it is impossible to accurately predict the occurrence or behavior of a spill; (2) until data from climatological, oceanographic and meteorological studies are available in 1983 predictability will not be substantially improved; and (3) existing control and clean up equipment is ineffective under weather and sea conditions which prevail much of the time in the Santa Maria Basin.

• Marine Mammals

The California coast is critical habitat for many species of marine mammals (i.e., sea lions, seals, including the threatened sea otter) and includes migration routes of a variety of whale species. Several of the whale species are threatened or endangered. Special protection must be afforded threatened and endangered species as required by the Endangered Species Act.

• Southern Sea Otter Protection

The Southern Sea Otter, a threatened species, is presently found only along the California Coast from Santa Cruz to Pismo Beach in San Luis Obispo County. The small population (approximately 1500) of the animal, and its extreme sensitivity to the effects of oil on its fur makes the threat of potential oil spills critical. If the Southern Sea Otter is to survive, it must receive special protection.

The Fish and Wildlife Service's Biological Opinion required by the Endangered Species Act emphasizes the sensitivity of the otter to oiling and the high probability that any otters subjected to oiling will die. The FWS also noted the difficulty of protecting or removing otters from the path of oil spills and the danger to its habitat and food supply. Unfortunately, the FWS evaluation was based on oil resource estimates and incomplete meteorological and oceanographic data. The FWS concluded that exploration may not jeopardize the sea otter but that consultation should be reinstituted prior to approval of any development plans.

California concurs with USFWS's discussion of potential impacts of oil on sea otters but does not agree with the USFWS's conclusion. The California Department of Fish and Game has analyzed the USFWS Biological Opinion and its own data on the sea otter population and has consulted with the California Coastal Commission. California is not prepared to accept the risk that a single oil spill may destroy a third of the existing sea otter population and seriously reduce the likelihood of the Southern Sea Otter's survival (FWS Biological Opinion, DOI PNOS Sale 53).

• Bird Resources

Major sea bird populations living along the San Luis Obispo and Northern Santa Barbara County Cost depend

on the sandy beaches, rocky intertidal zones, and estuaries for roosting, nesting and feeding. Over 33,600 individuals were counted in 1979 at Morro Bay alone, one of the most productive areas on the Pacific Coast (according to preliminary BLM studies). Important species in the area include the cormorant, pigeon guillemot, snowy plovers, least terns, and migratory Brown Pelican. Oil coming ashore during the breeding season would have serious adverse effects on the intertidal foraging zones in addition to disastrously effecting the birds themselves.

Also of concern is the protection of migratory birds and their habitat. The U.S. Government has accepted responsibility for such protection under treaties with Canada and Mexico.

• Rocky Intertidal Zones

The rocky intertidal zone extending from Montana de Oro State Park to Shell Beach comprise over 15 miles of virtually undeveloped coastline. The area contains subtidal and intertidal zones of exceptionally high quality. Reefs and rocks from Point Buchon south to Port San Luis contain many rare ecological communities. Irreplaceable, long-term marine experiments have been established in the area to monitor the effects of Diablo Canyon Nuclear Power Plant. The extensive rocky headlands, reefs, and emergent rocks of this shoreline support a luxuriant intertidal vegetation. One hundred and thirteen species of marine algae and flowering plants, including species of all three major groups of benthic marine algae are found in the areas (FEIS, pp. 3-43, 44). These nearshore reefs and intertidal areas are sensitive and extremely vulnerable to degradation from human disturbance, poor water quality and the effects of oil spills.

Hazard Reef, which begins at Hazard Canyon in the Montana de Oro State Park and continues south for nine miles, is a major formation in the area. This reef and the surrounding area to Point San Luis supports a rich assemblage of colonial hydroids, sponges, rock-barring clams, crabs, tunicates, starfish, abalone, sea urchin and other marine invertebrates. Over 90 species of algae are present in the intertidal zone. This is a unique algal zonation, differing from sites north of Morro Bay and south of Point Sal.

• Seal Haul Out Areas

Numerous seal haul out areas have been identified along rocky intertidal areas south of Montana de Oro. Lion Rock and Pecho Rock near Diablo Canyon have been identified as two or the more important offshore rocks found along the coastline. The California Department of Fish and Game reports that up to 1,400 California sea lions have been observed on Lion Rock (1978, unpublished). Young pups have been observed on this rock suggesting that sea lions breed there. As many as 500 sea lions have been seen on Pecho Rock (alternate site analysis, Technical Report No. 23, in Support of the Point Conception LNG Facility DEIR, April 1978, California Public Utilities Commission, A.D. Little Inc., p. 32).

The Department of Fish and Game reported that the San Luis Obispo County's population of harbor seals is 500 to 600 animals with about 10 percent found in the vicinity of Rattlesnake Canyon (1978, unpublished). Important haul out sites include Finger Point, Seal Rock, Windmill Point, Diablo Canyon and Double Rock.

• Recreation Areas and Points of Biological Sensitivity

The Coast of California is heavily used for recreation and is the basis of an extensive tourist industry which is a major factor in the State's economy. In addition to scenic vistas along coastal highways, there are many state, local and federal parks providing access to a rugged, but beautiful coast. Montana de Oro State Park and the Nipomo Dunes are recognized for their outstanding natural features. Other areas of biological sensitivity include: Diablo Cove, Avila Beach, Pismo Lake Ecological Reserve, Dunes Lakes, Guadalupe Dunes, San Antonio Beach, Purisma Point Dune Area, Santa Ynez River Dunes, California Transition Zone, and Point Conception. Should these areas be oiled, the damage to their natural value would be only partly accounted for by the economic loss due to reduced tourism.

• Fisheries, Commercial and Sport

California coastal waters constitute a major source for the west coast commercial fishing industry which is important to the economy of many coastal areas of California and

Oregon. The Morro Bay area supports extensive sport fishing activity. Damage to finfish and shell fish populations from oil spills or interference in fishing operation areas by oil activity will have a major economic effect on these industries. Also valuable to the fishing industry are the kelp beds all along the coast which provide food and shelter to various species of fish during portions of their life cycle. The kelp beds are also an important resource to the kelp harvesting industry which is dependent on the kelp as a raw material, and to the threatened California Sea Otter which uses the calm water and shelter the beds provide for resting and grooming activities.

• Geohazards

The Santa Maria Basin, as documented in the EIS, contains at least three types of geologic features which pose a hazard to oil and gas operations.

1) active seismic fault zones;
2) highly unstable mass movement areas; and
3) steep slopes in potentially unstable areas.

These hazards must be carefully evaluated to determine the potential for catastrophic incidents and resultant oil spills. In relatively remote locations not immediately adjacent to high value environmental resources, it may be possible to mitigate these hazards through special lease stipulations. However, in nearshore tracts adjacent to crucial habitat, deletion is recommended.

• Port Access and Navigation Safety

The Coast Guard will not complete its study of traffic safety and port access routes for the Pacific Coast prior to the scheduled sale date. Therefore, any decision regarding leasing of tracts in existing port access routes to the Estero Bay Marine Terminal and Port San Luis should be deferred pending completion of the Coast Guard studies.

• Protection of State Petroleum Reserves

The State Tidelands from the Santa Maria River north to the San Mateo County line is a petroleum reserve. Oil activity is prohibited unless federal leasing threatens drainage of state resources. In the absence of revenue sharing agreements under Section 8g of the OCSLAA, no leasing

should occur within one mile of the seaward boundary of the State Petroleum Reserve.

CONCLUSION:

The California Governor's Office has carefully reviewed the proposed Notice of Sale, the final EIS, and the comments of the California Congressional Delegation, State agencies, citizens, and local governments. As proposed, Lease Sale 53 does not balance the national interest with the well-being of the citizens of this State as is required by Section 19 of the OCS Lands Act, nor does it meet the balancing test of Section 18 of that Act.

A proper balancing would result in the deletion of 34 critical tracts due to inconsistency with California's federally approved Coastal Zone Management Plan, and conflicts with attaining the federal Ambient Air Quality Standards onshore, protection of a threatened species, protection of other marine mammals and sea birds, maritime safety and the continued viability of commercial and sports fisheries and recreation areas.

The people of California are doing their share to make America independent of foreign energy sources. Lease Sale 53 as modified by the above recommendations not only balances the national interest with the well-being of this State's citizens, but reflects the concerns of the nation as expressed in the OCSLAA, the Marine Mammals Protection Act, the Endangered Species Act, the Coastal Zone Management Act, the Clean Air Act, and the National Environmental Policy Act. The national interest is as well served by nurturing renewable resources as by the one-time production of small amounts of non-renewable oil and gas.

LEASE STIPULATIONS

Stipulation No. 1

Background: Due to lack of adequate information regarding the Santa Maria Basin (as noted in the DEIS and FEIS as well as the State of California in its comments to date) it is necessary that special efforts be taken to identify and protect resources in the area of proposed Lease Sale #53 if the sale is to proceed. Surveys required by this stipulation need not duplicate other efforts if data is available from existing sources in adequate detail to determine appropriate management techniques to ensure protection. It is for this reason that the following stipulation is recommended:

(a) Prior to any drilling activity or the construction or placement of any structure for exploration or development on lease areas including, but not limited to, well drilling and pipeline and platform placement hereinafter referred to as "operation," the lessee shall conduct site specific surveys as approved by the DCMOFO *in consultation with the USFWS, National Marine Fisheries Service, and the Governor of California, to determine if the tract or site contains areas of special biological significance that may be adversely affected by any lease operation.*

Areas of special biological significance shall include, but not be limited to:

—Critical habitat for rare or endangered species.

—Areas containing very unusual, rare or uncommon ecosystems and ecotones.

—Areas of abundant numbers or high diversity of species.

—Areas containing species of limited regional distribution due to natural range or significantly reduced populations.

If the results of such surveys suggest the existence of a special biological resource that may be adversely affected by any lease operation, the lessee shall: (1) relocate the site of such operation so as not to adversely affect the resources identified; (2) establish to the satisfaction of the DCMOFO *and the Governor of the State of California* on the basis of the site specific survey, either that such operation will not

have a significant adverse effect upon the resource identified or that a special biological resource does not exist. The DCMOFO will review all data submitted and determine, in writing, *following consultation with the Governor of the State of California*, whether a special biological resource exists and whether it may be significantly affected by the lessee's operations. The lessee may take no action until the DCMOFO has given the lessee written directions on how to proeceed.

(b) The lessee agrees that if any area of biological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the DCMOFO, and make every reasonable effort to preserve and protect the biological resource from damage until the DCMOFO has given *written* directions with respect to its protection.

(c) *The DCMOFO shall make the determination of necessary protection measures based upon consultation with the Governor of the State of California.*

(d) *Based upon the biological surveys the supervisor may also require the lessee to provide for periodic surveys or sampling of environmental conditions during operations and require reasonable corrective measures to mitigate identifiable adverse impacts.*

(e) *The lessee agrees that, if any area of special biological significance should be discovered during any operations on the leased areas, he shall report such findings immediately to the supervisor, and make every reasonable effort to preserve and protect the resource from damage until the supervisor has given the lessee directions to assure protection of the resource.*

Stipulation No. 2

If the DCMOFO, having reason to believe, *or having been notified by the Governor of the State of California*, that a site, structure or object of historical or archaeological significance, hereinafter referred to as a "cultural resource," may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements.

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and

pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indications are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the DCMOFO, and the manager, *and the Governor of the State of California* for review. If such cultural resource indicators are present the lessee shall: (1) locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the DCMOFO *and the Governor of the State of California* on the basis of further archaeological investigation conducted by a qualified marine survey archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the DCMOFO, either that such operation shall not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the DCMOFO, *the Governor of the State of California*, and the Manager for their review. Should the DCMOFO and *the Governor of the State of California* determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the DCMOFO, *following consultation with the Governor of the State of California*, has given directions as to its preservation.

The lessee agrees that if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the DCMOFO and make every resonable effort to preserve and protect the cultural resource from damage until the DCMOFO, *following consultation with the Governor of the*

State of California, has given directions as to its preservation.

Stipulation No. 3

No language change recommended. Add tracts listed below to those covered by the provision of the stipulation.

Tract No.	*Justification*
179	S½ within possible slide area
180	SW¼ within possible slide area
185	N1/3-1/2 within possible slide area
186	NW¼ within possible slide area
200	S¼ within possible slide area
206	E¾ within possible slide area
207	Western edge within possible slide area
212	SE¼ within possible slide area
213	All except NW¼ NW¼ within possible slide area
214	W¼ W¼ within possible slide area
219	NE¼ within possible slide area
220	N¼ within possible slide area
194	Possible fault zone
201	Possible fault zone
208	Possible fault zone
215	Possible fault zone
222	Possible fault zone
225	Submarine canyon, moderate slope

Stipulation No. 4

No change recommended.

Stipulation No. 5

No change recommended.

Stipulation No. 6

a) Pipelines will be required: 1) if pipeline rights-of-way can be determined and obtained; 2) if laying of such pipelines is technologically feasible and environmentally preferable; and 3) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas

and routed to minimize its proximity to sensitive environmental habitats, identified cultural resources, and sited in such a manner as to minimize, to the maximum extent feasible, risks of pipeline rupture from geological hazards. Section of the means of transportation will be determined in consultation with the Governor of the State of California and in consideration of any recommendation of the intergovernmental planning program for assessment and management of transportation of Outer Continental Shelf oil and gas with the participation of Federal, State, and local governments and the industry.

b). *The lessor reserves the right to determine the method of transportation for processed oil. Wherever feasible, as determined by the DCMOFO in consultation with the Governor of the State of California and the Regional Technical Working Group, onshore pipelines will be used to transport processed oil and gas from onshore or offshore processing plants to refineries. Barging or tankering of production will be permitted only in case of emergencies or under special circumstances as determined by the supervisor after review and consultation with the pipeline working group. Continuous barging or tankering will not be permitted in the event an onshore pipeline for the movement of processed oil from onshore or offshore processing plants to refineries is found by feasibility studies to be the most environmentally sound method of transportation.*

c) Following the completion of pipeline installation, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions an appropriate responses to these conditions will be made by the DCMOFO *in consultation with the Governor of the States of California.*

d) Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying hydrocarbons to shore from the leased area will conform with all standards established for such vessels, pursuant to the Port and Tanker Safety Act of 1978 (PL 95-474).

Stipulation No. 7

(a) Wells. Subsea well heads and temporary abandonments, or suspended operations that leave protrusions above the sea floor, shall be protected, if feasible, in such a

manner as to allow commercial trawl gear to pass over the structure without snagging or otherwise damaging the structure or the fishing gear. Latitude and longitude coordinates *and Loran C fixes* of those structures, along with water depths, shall be submitted to the DCMOFO. The coordinates of such structures will be determined by the lessee utilizing state-of-the-art navigation systems with accuracy of at least ±50 feet (15.25 meters) at 200 miles (322 kilometers).

(b) Pipelines. All pipelines, unless buried, including gathering lines, shall have a smooth surface design. In the event that an irregular pipe surface is unavoidable due to the need for valves, anodes or other strucutres, those irregular surfaces shall be protected, to the maximum extent practicable, in such a manner as to allow trawl gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear. The lessee shall recontour all significant disturbances resulting from pipeline burial to minimize conflicts with trawl fishing gear.

Stipulation No. 8

As proposed.

Stipulation No. 9

As proposed.

Stipulation No. 10

(a) Best Available Control Technology (BACT) shall be required for EPA criteria pollutants (e.g. volatile organic compounds (VOCs), oxides of nitrogen (NOx), oxides of sulfur (SOx), and particulate matter) which are emitted at a rate of five (5) pounds or more per hour from any OCS facility or support equipment. For the purposes of this stipulation, BACT shall include, but is not limited to:

(1) Water injection, at optimal levels, for control of oxides of nitrogen for gas turbines;

(2) Specially designed burners ("lo-NOx burners") to reduce oxides of nitrogen emissions;

(3) Devices to control 99 percent of sulfur emissions from sweetening operations;

(4) Vapor recovery systems on all storage tanks containing VOCs, and;

(5) Valve maintenance and repair programs as specified in the attached model rule.

In addition, the USGS shall request the Executive Officer of the ARB to make BACT determinations for all OCS emissions sources, and such determination shall be incorporated in the air quality permits issued by the USGS. In making the BACT determination, the Executive Officer shall consult with impacted local air pollution control districts.

(b) An emissions offset package, in compliance with locally impacted area's New Source Review Rules, shall be required for all EPA criteria pollutants that are still emitted at a rate of ten (10) pounds or more per hour after the application of BACT. The USGS shall require the Executive Officer of the ARB to review any offset package submitted by a lessee, and the Executive Officer, in consultation with affected local air pollution control districts, will determine the adequacy of the offset package by evaluating it in light of applicable new source review rules and available offsets. If the Executive Officer determines that the offset package is not sufficient, he shall provide written comments to the USGS specifying the areas of deficiency. The USGS shall then request the lessee to resubmit an offset package which corrects the deficiencies, and shall not issue a permit until such package has been submitted and approved by the ARB's Executive Officer.

(c) For enforcement purposes, the USGS shall require a lessee to submit a performance plan for monitoring or testing the control systems installed on OCS facilities to mitigate OCS emissions. The USGS shall submit this performance plan to the Executive Officer of the ARB for approval. The Executive Officer, in consultation with affected local air pollution control districts, shall approve, modify or disapprove of the plan within 60 days of receipt, and notify the USGS of his determination. Facilities shall not be allowed to operate until a performance plan has been approved.

(d) The USGS shall require the lessee to allow representatives of the ARB and the affected local air pollution control districts to inspect and source test emissions control systems for compliance with permit conditions. The lessee shall provide access to sampling points that will enable rep-

resentatives of the ARB and the district to collect samples of gaseous emissions or to source test the control system.

(e) Violations shall be subject to enforcement actions by state and/or local agencies under applicable federal, state and local laws.

Stipulations 2(a) and 2(b), requiring BACT and offsets, are necessary to satisfy several air quality concerns. First, the exemption limits and "significance" test contained in the USGS regulations will allow substantial new emissions sources to be sited without mitigation. As we have noted in previous comments, any increase in emissions in nonattainment or marginally attainment areas should be and must be regarded as significant, and the onshore areas affected by leases in the Santa Maria Basin clearly fall into that category. Second, the proposed 5 and 10 pound limitations will insure that the cumulative impacts which could result from OCS operations are minimized. In addition, these levels have been determined to be administratively feasible by California's state and local air pollution control agencies, and are in accord with the new source review standards established by San Luis Obispo and Santa Barbara Counties. Finally, the BACT and offset requirements will insure that offshore and onshore facilities are treated in the same manner, and will be consistent with the requirements of the Clean Air Act.

Stipulations 2(c), 2(d) and 2(e), concerning monitoring, inspection and enforcement, are necessary to ensure that required control systems are, in fact, meeting performance specifications. These three provisions are virtually identical to conditions which have been placed in permits for numerous onshore facilities, including Pacific Gas and Electric's geothermal power plant at the Geysers in Northern California.

CONCLUSION

If neither of the two proposals set forth above is adopted, the CARB believes that the size, timing and location of Lease Sale No. 53 activities will result in violations of federal ambient air quality standards, and will significantly impact California's air quality in an adverse manner.

Stipulation No. 11

Background:

The USFWS stated in its opinion, pursuant to Section 7 of the Endangered Species Act, that OCS exploration activities do not constitute a sufficient threat to jeopardize the continued existence of the Southern Sea Otter. The Service has further stated, however, that the increased oil spill potential from subsequent development and production phases of OCS activity may endanger the sea otters' continued existence and that further consultation should be undertaken prior to any approval beyond the exploration stage. The State of California questions the basis of the finding which minimizes the risk of exploration related oil spills, but agrees that development and production phases do represent a higher oil spill risk and that specific measures must be undertaken immediately to ensure that when development is proposed, the threatened species will be adequately established in safe areas and sufficient information available to enable the USFWS to determine whether development and production activity would place the sea otter in jeopardy.

It is in the interest of the DOI and all lessees to ensure that proposed OCS development does not jeopardize the threatened sea otter and that the otter population increases sufficiently to be removed from the threatened species list. Therefore, it is appropriate that the following stipulation be included in all leases in the Santa Maria Basin:

Prior to any drilling activity or the construction or placement of any structure for exploration, the lessee shall in consultation with the DCMOFO, the Fish and Wildlife Service, the Governor of the State of California, and other lessees reach agreement reegarding their funding of USFWS commencement of study, implementation, and monitoring efforts designed to protect and enhance the Southern Sea Otter population and minimize the threat of extinction due to the effects of OCS oil and gas operations.

The elements of this program, designed to encourage protection and recovery of the species, shall include at least the following measures:

1) Updated and revised oil spill risk analysis of the present and historic range of the sea otter including:

a) risk to distinct coastline sectors from distinct spill sources, types and quantities of oil spilled;

b) seasonal differences and characteristics of spill behavior, weathering factors, containment and cleanup capability, etc.

2) Examination of acute and chronic effects of oil on sea otters, their food supply, and habitat, including food chain contamination;

3) Develop an oil spill contingency plan, including stockpile of equipment and supplies, designed to minimize otter mortality. Measures to be considered and evaluated include:

how (or should) otters be captured, transported, cleaned, rehabilitated.

4) Baseline and Monitoring Programs to include:

a) compilation of information by trained observers on population dynamics, structure and movements

b) evaluation of the historic range of the Southern Sea Otter to determine likely locations for establishment of new populations (e.g., Baja California, Southern California, Northern California, Oregon, Washington, British Columbia)

c) obtain and evaluate data on social organization and structure of the California sea otter population to determine the number, age, sex composition, capture site, and season best for successful translocation efforts

d) obtain baseline information on the biological and economic consequences of sea otters living in an area.

5) If establishment of an additional population is deemed necessary due to threats of oil contamination in present range and habitat, the lessees in consultation with the DCMOFO, USFWS, and the Governor of the State of California shall determine the appropriate funding mechanism to enable the FWS to undertake the following:

a) translocation to chosen site or sites

b) followup monitoring program to study translocated animals to determine the successful establishment of a viable population.

Stipulation No. 12

Seasonal Restrictions

a) This stipulation shall apply to leases for tracts 201-203, 207-210, 214-217, 221-224, 227-229, 232-243.

b) Drilling and workover operations shall not be permitted between December 1 and April 1 to minimize risk of oil spills during extreme weather conditions from tracts (1) adjacent to prime sea otter habitat, and (2) through which gray whale migrations occur.

c) Exceptions to this paragraph shall be granted by the DCMOFO only after a Biological Opinion, pursuant to Section 7 of the Endangered Species Act of 1973 as amended, prepared by the U.S. Fish and Wildlife Service and National Marine Fisheries Service, has determined that such action will not jeopardize such populations.

Stipulation No. 13

Tideland Drainage Protection

a) This stipulation shall apply to tracts 203, 209, 210, 216, 217, 223, 224, 229-230, 234, 237-238, 241-243.

b) Pending a satisfactory resolution of a revenue sharing agreement under Section 8(g) of the OCSLAA with California, the DCMOFO shall not approve any drilling within one mile of the State Tideland Seaward Boundary.

State of California, Edmund G. Brown Jr., Governor
California Coastal Commission
631 Howard Street, 4th floor
San Francisco, California 94105
(415) 543-8555

March 23, 1981

The Honorable James Watt
Secretary of the Interior
Washington, D.C. 20240

Dear Secretary Watt:

The California Coastal Commission is dismayed to learn from your February 10, 1981 letter that you have decided to reinsert the four Northern California basins in OCS Lease Sale 53. Based on the extensive reviews and analysis conducted by this commission when this issue was before us previously, the Commission determined that the inclusion of the Eel River, Point Arena, Bodega and Santa Cruz basins in Lease Sale 53 would be inconsisent with the federally approved California Coastal Management Program. I intend to recommend whatever steps necessary to ensure that your Department complies with all requirements of federal law. Your action, if it becomes final, can only cause further delays to OCS development. In addition, your action substantially undermines the good working relationships California and its local governments have established with the federal government relative to the development of your offshore oil and gas resources.

The California Coastal Commission maintains that the final notice of sale is the key federal activity opening up thousands of acres of the outer continental shelf to oil and gas development and, as such, sets in motion a series of events which have significant consequences for California coastal resources. Accordingly it is the Commission's position that the Department of the Interior must submit a determination that the revised proposed notice of sale is consistent to the maximum extent practicable with the California Coastal Management Program, approved pursuant to the federal Coastal Zone Management Act (CZMA). The purpose of this letter is to formally request your sub-

mittal of a consistency determination for your action of February 10, 1981 which proposes to reinsert the four basins into Lease Sale 53.

In your letter you requested comments on the inclusion of the four basins in Lease Sale 53. This Commission has submitted detailed and focused comments on this issue. Please refer to the enclosed chronology which lists prior Commission action on this matter. In addition, we are once again preparing to take this matter to our Commission at its March 31, 1981 meeting. The Commission will again be asked to take a position on proposed Lease Sale 53 as revised. That action will merely consolidate our previous comments over the past two years. In those comments, we discussed, on a tract by tract basis, the appropriate basins and tracts which should be deleted. We also commented on the required stipulations for a determination that the proposed notice of sale for Lease Sale 53 is consistent with California's federally approved Coastal Management Program. These comments were intended to provide your staff with early notice of consistency problems of the proposed lease sale.

The Commission's comments are submitted under two separate federal laws. First, the Commission acts and comments as a state agency with an approved coastal management program under the CZMA. In this role, the comments advised your office that the four basins required a consistency determination. The Commission also explained why it found that the four tracts were *not* consistent with the approved Coastal Management Program. Second, the comments must be considered by you as part of the Governor's recommendtion under the federal Outer Continental Shelf Lands Act.

We also note that in addition to the federal Coastal Management Program administered by the California Coastal Commission, California's Coastal Management Program also includes a separate segment for San Francisco Bay, which is implemented by the San Francisco Bay Conservation and Development Commission (BCDC), BCDC has also previously submitted written comments. Since your action of February 10, 1981 anticipates that San Francisco Bay

will be a staging and service area for OCS development, your consistency determination must also analyze the San Francisco Bay segment of California's Coastal Management Program.

Sincerely,

/s/ Michael L. Fischer
MICHAEL L. FISCHER
Executive Director

MLF:LB:nc

cc: Governor Edmund G. Brown, Jr.
Senator Alan Cranston
Senator S.I. Hayakawa
Congressman Leon Panetta
Congressman Paul McCloskey
Congressman Tom Lantos
Congressman John Burton
Congressman Phillip Burton
Congressman Don Clausen
Congressman Paul McCloskey

CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105—(415)543-8555

March 20, 1981

TO: STATE COMMISSIONERS
FROM: MICHAEL L. FISCHER
SUBJECT: STAFF RECOMMENDATION OF POSITION STATEMENT ON REVISED PROPOSED NOTICE OF SALE FOR OCS LEASE SALE #53 (For Commission consideration at the March 31-April 1 meeting in San Francisco)

ACTION: Unanimously Adopted by Commission, March 31, 1981

SUMMARY

The Department of Interior has issued a revised Proposed Notice of Sale for Outer Continental Shelf (OCS) Lease Sale #53 to offer federal waters offshore five areas of central and northern California to the oil industry to explore for and develop oil and gas (Exhibit 1). The original Proposed Notice of Sale, issued by former Secretary Andrus in October 1980, included only the Santa Maria Basin. The date of the sale, set for May 1981, has remained unchanged. Under the OCS Lands Act Amendments of 1978, the governor has 60 days to respond to the Revised Proposed Notice of Sale, or to April 11, 1981. The Secretary will make the final decision in late April.

Staff once again recommends that the Commission recommend to Interior that the four northern basins be deleted from the sale for the following reasons: 1) the low amount of resources in these areas, or about 20 percent of the total sale estimates; when balanced against the high risk to the environment and economy of the predominantly rural and lightly developed coastline; 2) the Chapter 3 policies of the California Coastal Management Program protecting marine and coastal resources, and the character of the coastline; and 3) the required balancing under the OCS Lands Act Amendments of 1978 between the national interest and the well-being of the citizens of the state. Staff recommends the Commission further recommend the deletion

of 31 tracts in the northern Santa Maria Basin, 129-155 and 158-161, to protect the threatened southern sea otter which breeds, pups, and feeds in this offshore area.

Interior is conducting Environmental Studies on the #53 area. Staff continues to recommend that Interior delay leasing until important studies already underway for that area can be completed and incorporated into decisions to offer certain tracts for lease. These studies are 1) oceanographic and meteorological study of Offshore California (winds and currents) necessary for accurately determining oil spill trajectories and conducting an oil spill risk analysis; 2) Coast guard study of Vessel Traffic and Port Access Routes along the state's coast; 3) Geohazards Study for the #53 area; 4) Marine Mammal and Seabird Study for #53 area; 5) Northern California Risk Assessment to Marine and Coastal Habitats; 6) Seabird Oil Behavior Study; and 7) Commercial and Sport Fisheries Oil Toxicity Study. Information from each of these studies should be applied on a tract-by-tract basis in the Santa Maria Basin to determine which tracts present the greatest potential for oil spills, vessel traffic conflicts, geologic hazards, and risk of oil reaching sensitive biological resources on or near shore.

Staff recommends that the Commission reaffirm its position that the proposed lease sale has a "direct effect" on the coastal zone and therefore requires a consistency determination by Interior as provided in the Coastal Zone Management Act. Also, the Commission should find that leasing of the four northern basins is not consistent with the California Coastal Management Program, as approved by Department of Commerce under the Coastal Mangement Act.

Staff further recommends that the Commission submit this recommendation as a part of the Governor's comments required under the Outer Continental Shelf Lands Act Amendments of 1978. Independent of the CZMA, the Commission's findings are part of the laws, goals, and policies of California.

Background. The Department of Interior is proposing to lease five geological basins offshore Humboldt, Mendocino, Sonoma, Marin, San Mateo, Santa Cruz, San Luis Obispo and Santa Barbara Counties to the oil industry for oil and

gas development (Exhibit 1). The sale date is set for May 28, 1981. The Governor, the Commission, and all of the affected counties have commented extensively on this proposal to Interior, under both the Carter and the new Reagan administration, throughout the lease sale process. A chronology of the Commission's positions on the proposed sale is included in Appendix F. Briefly, the Commission, after public hearings, first recommended delay of the entire sale for at least two years, pending completion of the environmental studies on the sale area. If the sale were not delayed, the Commission recommended deletion or "negatively nominated" many areas for protection of seabird and marine mammal breeding and resting areas, elimination of conflict with vessel traffic, protection of areas of special scenic quality, and elimination of waters deeper than 2400 feet which are beyond the expected state of technology at the time of development.

Interior selected those tracts shown in Exhibit 1 for further study in an Environmental Impact Staement. The Commission held public hearing and commented on the Draft EIS to Interior, noting severe inadequacies in the oil spill analysis, in the failure to consider the five basin areas separately in the environmental analysis, and the general superficial and vague treatment of many of the key resource conflicts.

The publication of the Final Environmental Statement in September 1980 included an "addendum" in the front indicating new U.S. Geological Survey estimates of the petroleum resource estimates in the lease sale area. A new wave of protest from the state, the counties and the public arose. First, the revised estimates showed for the first time a likelihood that oil existed in the Eel River Basin offshore Humboldt County; Interior had never done an environmental analysis based on this information, rendering the EIS a legally deficient document. Now 80 percent of the oil and gas resources were believed by USGS to rest in the Santa Maria Basin. The estimates for the three middle basins had changed little. Second, a new opinion issued by the U.S. Fish and Wildlife Service about the same time as the FEIS revealed that OCS development could jeopardize the sur-

vival of the threatened southern sea otter and therefore that a new biological opinion would be needed at that time.

In response to past comments and these new developments, Secretary Andrus issued a Proposed Notice of Sale in October 1980 that deleted the four northern basins—the Eel River, Point Arena, Bodega, and Santa Cruz Basins. The Commission, in its response to that Notice, commended the Secretary for his decision, but also further recommended deletion of 31 tracts in the northern Santa Maria Basin to protect the sea otter and delay of sale of the remaining tracts in the basin until the crucial environmental studies on the area could be completed. The Commission restated its position that a decision to lease the four northern basins would result in a finding of inconsistency with the CCMP and in litigation against the Department of Interior.

With the change in administration, the new Secretary of the Interior has revised the Proposed Notice of Sale, reinstating the four northern basins into the sale but retaining the original sale date of May 1981. The Governor has 60 days, or until April 11, 1981, to respond to this Proposed Notice. The Commission is submitting comments both to the Governor as a state agency offering comments to be incorporated into an overall state package, and directly to Interior as the state's coastal management agency.

II. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following resolutions and findings on the revised Proposed Notice of Sale for Lease Sale #53 issued by Secretary Watt February 10, 1981:

A. Consistency of the Proposed Sale With California's Coastal Management Program (CCMP)

The Commission finds that the revised Proposed Notice of Sale issued by the Secretary of Interior to offer areas offshore the northern and central coast of California to the oil industry for exploration and development of oil and gas has a direct effect on the coastal zone and therefore requires Interior to issue a determination stating whether the project is consistent to the maximum extent practicable with the CCMP. The Commission also finds that, even if In-

terior issues a determination of consistency as the law requires, the proposed decision is *not* consistent with the CCMP to the maximum extent practicable.

To provide the Department of Interior with further information regarding the Commission's planning and permit responsibilities under the Coastal Zone Management Act and its federally approved Coastal Management Program (CCMP), the Commission has included a background section in Appendix A and incorporated this background section by reference into this recommendation.

Federal Coastal Zone Management Act. The Commission submits this recommendation to fulfill two obligations set forth in federal law. First, these comments are submitted as part of the Governor's recommendation according to the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA), discussed in more detail in Appendix B. Second, the Commission submits this recommendation independently of the Governor's office according to the requirements of the approved coastal management program (CCMP) under the Coastal Zone Management Act (CZMA).

The Commission's recommendation under the CCMP concludes, based on findings in Section C, that Secretary Watt's action on February 10, 1981, of issuing a revised Proposed Notice of Sale that included the four northern California basins, is not consistent with the policies of Coastal Act as incorporated into the approved CCMP.

It is necessary to review the CZMA to understand the Commission's role in lease sale activities conducted by the Department of Interior. This review is included in Appendix C. Briefly, the Department of Commerce administers the CZMA and in November 1977 it approved California's Coastal Management Program (CCMP). The CCMP gave the state of California and thereby the Coastal Commission, the state's coastal management agency, a significant role in federal decisions that affect the coastal zone. Under Section 307(c)(1) and (2), if a federal activity directly affects the coastal zone, the federal agency must determine that the activity will be conducted in a manner consistent, to the maximum extent practicable, with the CCMP. Basically, the CCMP includes the Coastal Act and the Commission's

regulations. Thus, the federal activity is reviewed according to the regulatory development policies of Chapter 3 of the Coastal Act in the same manner as if the activity were a coastal development permit application.

The Commission has found the decision to offer tracts for lease in Sale #53 has a *direct effect* on the coastal zone and therefore requires Interior to submit a consistency determination to the Commission. There is serious disagreement between the Commission and the Department of Interior as to whether a decision to lease tracts activates the consistency provisions of the CZMA. Historically, Interior has taken the position that the CZMA does not apply to a decision to lease tracts on the OCS. The Commission has taken the position that the CZMA does apply to this type of activity and therefore requires a consistency determination from Interior. The Commission has fully articulated its position in Lease Sale #48 and requested mediation of this issue even though it had little substantive disagreement with the terms of the sale itself.

Commission's Position on Consistency of Lease Sale #53 and the Direct Effect on the Coastal Zone of a Decision to Lease. The Commission has found that a major decision offering massive offshore areas for oil and gas development, in this instance 1.3 million acres, has a direct effect of the coastal zone. It requires early resolution of use conflicts with fishing, shipping, agriculture, and recreation, and consideration of coastal dependent industrial uses in local land use plans *at this time.* For example, land uses onshore must provide for harbor facilities for vessels to serve offshore rigs, pipelines, related onshore industrial development, and relocation of incompatible uses, such as fishing or recreation. This is particularly true for the largely undeveloped Mendocino coast, Farallons, and Santa Cruz areas, which are currently zoned for exclusive agricultural use and will require major changes to existing zoning and planning to accommodate offshore oil development. A chronology of the Commission's position statements on this issue is attached in Appendix D.

In highlighting the nature of the effect of Interior's lease sale activities on the coastal zone, the Commission quotes

from Interior's own Bureau of Land Management (BLM) *Study Design for Resource Management Decisions: OCS Oil and Gas Development and the Environment*, October 1, 1978. At p. 2-1 of that document, OCS leasing activities are described as follows:

> The tentative scheduling of an areas for OCS leasing is a *major decision* in that it *establishes* the resource use conflict by identifying the potential new use (oil and gas extraction) that will possibly *conflict with present uses (fishing, recreation, transportation, etc.)*. Thus, in some instances studies to further define these potential resource use conflicts may be profitably undertaken prior to scheduling, or well before a Call for Nominations is issued for an area already scheduled.
>
> Stipulations, operating orders and tract deletion are the most prominent administrative mechanisms through which to apply environmental information. (Note: Stipulations are formulated and required at the lease sale stage.)

The comments quoted above clearly admit that Interior's decision to lease is a *major decision*, as the Commission has previously found.

Thus, as stated in full in the Position Paper incorporated by reference in Appendix D, the Commission finds that the decision to offer for lease 1.3 million acres in five off-shore areas must be considered a key decision of the Department requiring comprehensive, not later piecemeal, review of state policies and laws pursuant to the CZMA and OCSLAA. The final notice of lease sale provides the only opportunity for comprehensive review of the *cummulative* impacts of the federal decision. The decision establishes both the boundaries of the subdivision and the terms or conditions, (i.e., stipulations), under which later development will occur. It therefore sets in motion a chain of events from which there is no return. The lease sale represents the only stage in the entire process where tract selection and deletions can be made and specifies the conditions of development through lease sale stipulations. As such, it represents the federal government's master plan for development of petroleum resources. The controls specified at this time set the basic parameters of the contractual rela-

tionship between the companies and the Government. It therefore defines the reasonable expectations upon which companies will make economic judgments. To postpone a consistency determination which may affect later allowable locations of drill sites, air quality and other factors in production is particularly unfair to the companies who will be making their judgments based on the final notice of sale. It also ignores the important role given to state participation in both federal laws, the OCSLAA and CZMA. In conclusion, the Commission emphasizes that it is most critical to have the consistency determination made as early as possible. This will save the states, federal government, companies and the public from spending unnecessary time and effort on inappropriate tract development.

Scope of Consistency Review. Once the direct effect of a federal activity on the coastal zone is established, the next step is to determine if that effect is consistent with the state's CCMP. The CCMP includes the development policies of the Coastal Act and a consideration of the national interest that involves many issues in addition to our energy needs. As stated above, the standard for consistency of a federal agency's activity, if it directly affects the coastal zone, is "consistent to the maximum extent practicable." The CCMP uses the term"feasible" instead of "practicable" and defines the scope of feasibility to include technical, environmental, economic and social. This definition conforms with the broad view of the CCMP of "national interest" which includes not only energy production but recreation, production of food, preservation of life and property, aesthetic and conservation values, and interstate transportation. This would encompass possible use conflicts to be considered in Lease Sale #53 between OCS development and commercial fishing, prime agricultural lands, harbor facilities, national seashores and parks, areas of unique scenic value and marine sanctuaries, to mention a few major uses of the coastal area. Exhibit 3 is a table in the CCMP indicating policies of the Coastal Act that consider that national interest in all its aspects.

"Consistency", pursuant to the CZMA and the CCMP, in addition also includes the findings of other state regulatory

agencies even if such agencies themselves do not have an approved CCMP. This conclusion is based on the express terms of the Coastal Act and the CZMA as discussed and incorporated by reference in Appendix E. Thus, the Commission cannot find a federal activity "consistent" with the Coastal Act or the CCMP, if it is inconsistent with the regulatory program of other state agencies. Specifically, the Commission could not approve a federal project if that project failed to meet the air quality standards set by the State Air Resources Board. The ARB had pointed out that there are severe air quality impacts which cannot be mitigated by this federal activity. Based on those findings, the Commission concludes that the federal activity is also inconsistent with the Coastal Act and the CCMP.

B. Commission Record on Consistency Review of OCS Plans. The Commission finds that consistency review of a decision to lease is necessary, for the reasons stated above in Section A. Because of the Commission's past experience with consistency review of OCS Plans *after* a tract has been leased, the need for pre-lease review is essential to prevent needless conflicts and delays over developments on tracts that clearly could be identified before a lease sale as inappropriate for leasing under the CCMP.

Neither the Commission nor the State of California is opposed to the production of oil and gas in offshore waters. California is a pioneering state in offshore oil production both of its own state tidelands and in federal OCS waters. The Commission believes that its record on post-sale consistency review affirms this statement. A brief review of this record is contained in Exhibit 2. All of these exploration and development plans were located in Southern California, where an infrastructure to support such OCS activities already exists, such as service bases, processing facilities, pipecoating yards, and harbor facilities for the crew and supply boats. The OCS plans were on leases bought in Lease Sale #35, the Santa Barbara Channel sale, or Lease Sale #48. The first two sales occurred before the Coastal Act became effective. Concerning Lease Sale #48 tract plans, the Commission has approved all the Plans of Exploration that have come before it. These approvals fol-

low through with the Commission's statements that it had few substantive objections to Lease Sale #48, a lease sale that covered only Southern California where OCS infrastructure already exists. The presence or absence of offshore and onshore infrastructure is a critical, fundamental distinction between Lease Sales 35, 48, on the one hand and, Lease Sale 53, on the other hand. The Commission's objections to Lease Sale 53 cannot be resolved later at the plan of exploration stage because they involve such major concerns as the lack of onshore facilities, land, and population that can accommodate oil development. Therefore, one cannot look at the Commission's actions on the plans of exploration and development shown in Exhibit 2 as analogous to its predicted later actions on Lease Sale #53 plans of exploration and development. First, Lease #35 and the Santa Barbara Channel sale could not be viewed in terms of an overall leasing program since such a program did not exist at that time. Second, Lease Sale #53 includes areas of low energy resource potential, contrasted with the high potential and proven reserves in Southern California. Third, Lease Sale 53 includes rural, undeveloped coastline of national significance as a tourist, commercial fishing and agricultural resource. Its valleys produce crops for national economy. Its waters produce fish shipped to all parts of the world. Oil development would require massive reallocation of land uses that have not been previously considered. Therefore, Lease Sale 53 presents enormous concerns in planning and permitting functions not present in any other prior lease sale. The Commission has previously extensively documented these concerns and incorporates them by reference into its findings in Sections C 1-6. Briefly, however, there is a crucial need for a comprehensive review of the problems presented by the size, timing, and location of Lease Sale #53, a frontier area, before the sale takes place.

Despite the differences noted above, however, the Commission believes that its actions on the consistency reviews of the plans and exploration and development in southern California should nevertheless be instructive to Interior. For example, the Commission has established a policy through review of these plans that leasing within 6 nautical

miles of a sensitive marine mammal or seabird breeding area or within 500 yards of a Coast Guard-established Vessel Traffic Separation Scheme (VTSS) would be inconsistent with the CCMP. Both standards were developed in consultation with other federal and state agencies and in fact are derived from federal standards. These standards apply to southern California where offshore waters are calmer and do not pose the navigational hazards or oil spill cleanup and containment problems that will be present in Lease Sale #53 waters.

By noting standards involved in past lease sales, the Commission hopes that all parties will build on the Commission's prior decisions as experience in OCS leasing grows. To ignore the experience of the past, seems to this Commission a costly and time-consuming prospect in this time of national energy crisis.

Only one OCS Plan untimately failed to meet the Commission's criteria for consistency, Chevron's plan of Exploration for OCS Parcel 0205. The plan would have involved drilling an exploratory well within 5.7 miles of Anapaca Island where the endangered California Brown Pelican has its only breeding grounds in the state and within 500 yards of the VTSS in the Santa Barbara Channel. The Commission, after public hearings and lengthy discussion at two meetings, voted to object to Chevron's consistency certification. The Commission found that the risks of oil spill reaching the pelican breeding area could not be mitigated by changing the time of year in which the drilling would occur. Chevron did not appeal the objection and has decided not to drill the well. However, the objection did not block Chevron's plans to develop the oil field. Similar concerns occur in Lease Sale #53, as indicated in the following sections.

The Commission's record of consistency reviews of OCS plans and clear standards for objection has led several oil companies to modify the location of proposed activities, increase onsite oil spill containment and cleanup equipment, or otherwise modify their plans to conform to the CCMP. The Commission's positions have been consistent throughout this process and the Commission has sought to fulfill its

national interest obligations by giving precise guidance as to the areas where drilling is inappropriate. The Commission's standards for consistency can be applied with the same success at the pre-leasing stage to avoid leasing of tracts that cannot be explored or developed in a manner consistent with the CCMP. To lease tracts that the Commission has indicated cannot be developed consistent with the CCMP, such as a tract within 12 miles of the southern sea otter habitat, invites the probability of a Commission objection at the exploratory drilling stage, with lengthy delays if mediation or litigation follows.

C. *The Consistency of Lease Sale #53 with the CCMP.* The Commission finds that the revised Proposed Notice of Sale for Lease Sale #53 which includes five geologic basins offshore central and northern California (Exhibit 1) is not consistent with the state's federally approved coastal management program (CCMP). Specifically, the proposed leasing of the four northern basin areas would be inconsistent with Sections 30230, 30232, 30240, 30251, 30253, and 30260 of Chapter 3 of the Coastal Act and the national interest requirement in the CCMP. The following sections explain why each of these policies require the Commission to find the proposed sale of these basins inconsistent with the CCMP. The sections also explain why 31 tracts in the Santa Maria Basin should be deleted from the sale.

Secretary Watt has asked for additional comments on the proposed leasing of the four northern basins, claiming that the state never had the opportunity to do so. Appendix F is a chronology of comments from the Commission to Interior on Lease Sale #53. Exhibit 4 is a copy of the Secretary's letter to Governor Brown.

1. *Section 30230—Protection of Marine Resources.* The Commission finds that leasing within 6 nautical miles of existing or proposed marine sanctuaries or of marine resource areas indicated below, or within 12 miles of the range of the southern sea otter would not be consistent with the CCMP and would be contrary to the national interest.

The main part of the CCMP that addresses protection of marine resources is Section 30230 of the Coastal Act, which states:

Section 30230. Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological and economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species or marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Marine Sanctuaries. The OCS tracts being considered for Sale #53 include some areas within the boundaries of proposed and existing federal marine sanctuaries, clearly an expressed national interest (Exhibit 1). One alternative being considered for the Monterey Bay Sanctuary has a boundary extending offshore from Point Ano Nuevo south to Point Sur. A major purpose of these sanctuaries is to assure there are some ocean water areas offshore California where the clearly paramount use is for undisturbed and unthreatened feeding, resting, traveling and breeding of marine mammals and seabirds. All tracts within the boundaries of the Point Reyes-Farallon Islands Marine Sanctuary and the possible boundaries of the Monterey Bay Marine Sanctuary should be deleted from the Sale. Any leasing of these tracts would be inconsistent with the CCMP. The Commission also notes that the EIS shows comparatively high probabilities of oil spills from the Santa Maria Basin affecting San Miguel Island and Wilson and Richardson Rocks and surrounding waters. These areas are now incorporated in the Channel Islands National park or are within the boundaries of the Channel Islands Marine Sanctuary. These areas are well known for their breeding seabirds and marine mammals.

Other Marine Resource Areas. The entire Sale #53 area is frequented by migrating whales and by sea lions, harbor seals, elephant seals, and some rare fur seals. In 1978 the Commission identified key marine mammal and seabird breeding and resting areas in central and northern California and determined there should be no leasing within six miles of these areas. The Commission has repeatedly informed Interior of the sensitivity of the marine mammals and seabirds along the coast (See Appendix F). Many of

these areas remain threatened by prospective leasing. The Commission has found there should be no leasing to oil companies in the following areas: *Point Arena Basin* tracts within six miles of the Mendocino Coast from Elk Creek to Ten Mile River and within six miles of the coast from Point Arena to Gerstle Cove, including Arena rock, Seal Haul Rock, Saunder's Reef, Sea Lion Rocks, Haven's Neck and Fish Rocks; *Bodega Basin* tracts within the proposed marine sanctuary boundary; *Santa Cruz Basin* tracts within six miles of San Pedro Rock, Three Rocks, Eel Rocks, Seal Rocks, and the coast extending south from Point Ano Nuevo; and *Santa Maria Basin* tracts within six miles of Point Buchon, Morro Rock, Lion and Pecho Rocks, and the Nipomo Dunes. The Commission also has found that the California Sea Otter Range should be protected from oil spills and industrial disturbances. For further detail on the vulnerability of the southern sea otter and the need for a 12-mile buffer between the otter and any OCS development, Interior should refer to the Commission's comments of 11-21-80, 12-8-80, and 12-16-80, with its Addendum to Findings, incorporated herein by reference. Interior should also note the Biological Opinion prepared by the U.S. Fish and Wildlife for Sale #53 regarding the sea otter (see p. 5, Appendix F). Other federal agencies have expressed concern over some of these conflicts. For example, the National Oceanic and Atmospheric Administration, in its July 3, 1980 comments on the Draft Environmental Statement, states that 99 tracts should be deleted from the sale for conflict with the viability of marine mammals and commercial fisheries.

2. *Section 30232, Protection Against Spillage of Crude Oil* and *Section 30240, Environmentally Sensitive Habitat Areas.* The Commission finds that the state-of-the-art oil spill cleanup and containment equipment would not offer effective protection to resources in the four northern basins where oil would be transported by barge or tanker or in the sea otter range in the Santa Maria Basin where the risks to the threatened otter are high. The Commission further finds that it is not in the national interest to jeopardize the National Estuarine Sanctuary at Elkhorn Slough or the National Wildlife Refuge in Humbolt Bay. Further, other des-

ignated wetlands could not be leased in a manner consistent with the CCMP because of the frequent ineffectiveness of existing oil spill containment equipment.

Section 30232 of the Coastal Act expresses the policy of the CCMP to protect the resources of the coast from oil spills. It provides:

> Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Similarly, Section 30240 mandates protection of environmentally sensitive habitats:

> *Section 30240.*
>
> (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
>
> (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The Secretarial Issue Document for Lease Sale #53 predicts that *4.25 oil spills* over 1000 barrels will occur somewhere in the 53 area over the life of oil production, or over about 20 years. These predictions may be seriously flawed due to 1) *inaccurate oil resource estimates*, especially in light of the increase in estimates that occurred with the publication of the Final Environmental Statement in which the spill estimates increased from 2.29 to 4.25; and 2) inaccurate data bases used for the predictions and for the spill trajectory models. Results of studies on physical oceanographic and meteorological data for the area are still not available.

However, regardless of the predictions, the state-of-the-art in oil spill containment and cleanup equipment does not provide for protection against spillage of oil and is not ef-

fective in containing oil in seas over six feet, currents exceeding one knot, and high winds.

Because of the deficiencies in oil spill control equipment and procedures, the Commission generally finds that the most effective way to prevent damage to sensitive and scenic coastal areas from oil spills is to prevent oil development and transportation near them in the first place. Therefore, in policy statements on lease sales, marine sanctuaries and in consistency determinations on OCS oil exploration and development plans, the Commission has determined that there should be no oil development within marine sanctuary boundaries, at least six miles of marine mammal and seabird breeding and resting areas and of other sensitive and valuable marine and coastal resources, and within 12 miles of the endangered sea otter.

Due to coastal tanker traffic, an oil spill risk already exists in the proposed sale area, with its several operating marine terminals. A large spill could damage the economic vitality of many of the Lease Sale #53 coastal areas which depend on commercial fishing and recreation for survival. A large spill in the Santa Maria Basin, where BLM predicts 3.25 large spills over the life of the producing fields, could jeopardize the entire population of the threatened southern sea otter, an unacceptable risk both under the CCMP and the Endangered Species Act.

Finally, much of the coastline in central and northern California is rocky with small coves or contains bays, marshes and esteros. It would be extremely difficult to clean up these areas and consequently they would sustain the heaviest damage to marine life for the longest time. A spill off Tomales Bay, approved for federal purchase, and Elkhorn Slough (a National Estuarine Sanctuary) for instance, would be nearly impossible to contain because of wind and wave conditions, and equally difficult to clean up once inside the bay. The mariculture industry in both and these wetlands would be destroyed for a number of years, and national interest in designation of an estuarine sanctuary thwarted. Other portions of the California coast adjacent to the four northern basins contain significant wet-

lands that should not be submitted to risks from OCS development:

The Coastal Commission finds that leasing within six miles of those designated environmentally sensitive habitat areas and marine resource areas cited in Section C.1 would be inconsistent with the CCMP policy of protection against the spillage of crude oil because of the ineffectiveness of containment and cleanup equipment in typical central and northern California sea conditions, and the value of these resources.

3. *Section 30251 Scenic and Visual Qualities.* The CCMP states that there is a national interest in the high scenic value of a coastal area. Leasing of tracts offshore in the Lost Coast (King Range National Recreation Area, Pt. Reyes National Seashore, the Golden Gate National Recreational Area) would not be in the national interest and therefore not consistent with the CCMP. Further, leasing of the four northern basins would affect the scenic quality of a substantial part of that coastline known for its beauty and therefore would not meet the policies of Section 30251.

Section 30251 of the Coastal Act is one expression of this policy:

> "The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas to minimize the alternation of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting."

OCS development necessarily requires offshore platforms sometimes 100-feet high and associated onshore facilities which, under the Coastal Act, could not be permitted in areas of scenic and visual quality. The Commission's July 6, 1978 recommendation designated areas of special scenic quality that would be affected by Lease Sale 53: 1) Lost

Coast, which includes King Range National Conservation Area; 2) Mendocino headlands; 3) Pt. Reyes National Seashore; 4) Golden Gate National Recreation; and 5) San Mateo County coast. Any intruding industrial developments in these areas comprising a substantial portion of the coast in the northern four basins is rural and lightly developed, would be incompatible with protection of scenic and visual resources under the Coastal Act.

4. Section 30253 provides standards for new development concerning geologic hazards and air quality, among others. The pertinent subsections state:

> "new development shall: 1) Minimize risk to life and property in areas of high geologic, flood, and fire hazard. . . . . (3) be consistent with requirements imposed by local and air pollution control district or the State Air Resources Control Board as to each particular development.

The Commission, although it has consistency review in these two technical areas, has deferred to the expertise of the State Lands Commission and the Division of Mines and Geology for determination of geologic hazard areas, and to the Air Resources Control Board for air quality concerns. As was explained in the Air Quality discussion earlier, input from these agencies will be used by the Commission in reviewing the consistency of any proposed OCS plans, and is also being used now by the Governor in his comments to the Proposed Notice of Sale issued by Secretary Watt.

5. Section 30260. *Coastal Dependent Industrial Facilities.* The CCMP includes the following special policy for considering coastal-dependent industrial development, such as OCS oil and gas facilities that requires a balancing of environmental risks with the public welfare. Section 30260 provides:

> Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections

30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

Alternative locations. Oil fields do not have alternative locations, being naturally created. Therefore, alternative locations for OCS tracts are infeasible.

Mitigation. The second criterion for OCS development to be approved under Section 30260 is that adverse environmental effects must be mitigated to the maximum extent feasible, or "practicable" as the CZMP requires, discussed in Section A. Section C.2, on protection against oil spills, states that mitigation of spills is frequently not effective. The effective limit for cleanup and containment equipment is about six foot seas and a current of one knot, a sea state exceeded more than 50% of the time in central and northern California waters. Because the state of the art cannot offer better protection, mitigation of oil spill impacts would occur to the maximum extent feasible under existing technology.

Mitigation of adverse environmental effects is also possible through planning for OCS-related uses in the Local Coastal Programs—a process which is explained more fully in its relationship to OCS development in the next section. However, the onshore coastal area adjacent to lease sale #53 cannot accommodate OCS facilities in many areas without displacing or transforming other uses in the coastal zone. Therefore, the Commission finds that the maximum feasible mitigation of conflicts with other coastal uses can only be provided by deleting the four northern basins. This second criterion is therefore not met.

Public Welfare. Public welfare is analogous to the national interest as defined in the CCMP. Exhibit 3 from Chapter 11 of the CCMP shows that national interests include consideration not only of energy production but also recreation, production of food, transportation, preservation of life and property, and aesthetic and conservation values. Page 84 of the CCMP further describes how the national interest is considered in the Coastal Act:

Recognizing its responsibilities to the rest of the nation, California in its coastal planning has made every effort to consider the national interest in issues affecting the coast. The Coastal Management Program recognizes national defense and national security as important aspects of national interest, because without the attainment of these objectives all other goals and objectives can be threatened. The Central Act's policies on the protection of agricultural land and marine and wildlife habitat recognize the importance of California farm production and fisheries to the rest of the nation and also acknowledge the world food shortage. The policies calling for recreational and public oriented uses to have a high priority along the coast reflect the increasing popularity of the coast as a tourist destination.

The Coastal Act's energy and industrial development policies, especially important because of the increased interest and activities resulting from the Department of the Interior's leasing of Outer Continental Shelf (OCS) areas for petroleum exploration and extraction, take into account California's role in addressing national energy needs. The energy policies are based on a willingness to respond with a broader State role in meeting the nation's energy needs while, at the same time, properly planning for and protecting California's environmental, economic, and legal interests.

The Commission has recognized the need for California to contribute to the nation's energy supply through OCS development. It has supported and approved OCS lease sales and development projects in Southern California where petroleum resources are high and an infrastructure exists to support offshore oil development. (See Section B). Exhibit 2 shows the Commission's record in reviewing OCS plans for consistency. The CCMP also required the Commission to consider environmental, economic, and legal interest, as well as energy needs. Commercial fishing, tourism, recreation and agriculture industries along the coasts of the four northern basins could either be displaced by need for OCS-support facilities, such as harbor space for supply and crew boats and service bases, or damaged if an oil spill were to

occur. As stated above, if all five basins are leased, the Bureau of Land Management expects 4.25 oil spills of over 1000 barrels are to occur over the 20-year life of Lease Sale #53. This figure is over and above the existing risk of oil spills along the coast from tanker traffic and other sources.

The shipping industry would also be affected by OCS development: offshore structures, such as drilling vessels or platforms should not be located where they would conflict with existing or future-established vessel traffic routes. But, because there is no assurance that this would happen, conflict between these two uses of the OCS could result in rammings or collisions between the vessel and the offshore structure, possible resulting in either harm to life or property, and an oil spill, or both. The Coast Guard should complete its Vessel Traffic and Port Access Routes Study for the California coast before tracts are sold in northern and central California to allow for the safest possible traffic routes to be chosen.

The national interest has been expressed by the federal government in its designation of parks, wilderness areas, marine sanctuaries, estuarine sanctuaries and wildlife refuges. Exhibit 1 shows these national important areas. OCS developments that would pose a threat to the values of these areas would conflict with the national objectives of these programs on which millions of dollars have been spent in acquisition and maintenance. The federal Endangered Species Act also mandates federal protection of species designated as threatened or endangered by the U.S. Fish and Wildlife Service. As discussed above, the USF & W Biological Opinion on the proposed lease sale concludes that OCS development could jeopardize the survival of the threatened southern sea otter, requiring a second opinion if development occurs at a later date. There clearly is a decided national interest in protecting a federally designated threatened species.

Finally, the aesthetic and cultural value of the northern and central California coastline is a resource of national value. The areas mentioned in Section C.3 are of particular concern to the Commission where OCS development would be incompatible with the highly scenic character of the

coastline. The tourist and recreation industries thrive on the unspoiled, natural quality of the coast of most of northern and central California—a quality that would be compromised by the impacts of OCS development.

Conclusion. The Commission finds that the mitigation measures available do not adequately protect the natural resources and economic resources of the coastal zones in and adjacent to the four northern basins and the 31 tracts in the Santa Maria Basin. Oil spills cannot be adequately cannot maintain the existing character of the coastline. The national interest in terms of energy production from the amount of oil and gas that is expected to be produced in the four northern basins—20% of the total sale area—is far outweighed by the probable damage to all of the other national interests that could be adversely affected by OCS development activities and facilities. Therefore, the public welfare would be adversely affected by the Commission finding that leasing these four basins and 31 tracts are in the national interest and consistent with the CCMP.

6. *Local Coastal Land Use Planning.* All of the policies discussed above, i.e., marine resources, oil spills, environmentally sensitive habitats, scenic and visual qualities, are enforceable development policies applicable to the Commission's permit and *planning* functions. The discussion of each in previous sections emphasized the relationship of the policies to Commission permit or consistency decisions. It must be emphasized in this secton, that the Commission planning functions as well as its permit functions, also apply these same policies. In addition, CZMA mandates the Commission to consider the national interest in planning and siting energy facilities either in, or which may significantly affect the coastal zone, and to develop a planning process for anticipating and managing the facilities (Section 306(e)(2) and 305(f)(8) of the CZMA).

The Commission's planning program is briefly described in Appendix G. The Commission's certification responsibility for local coastal programs requires it to review and approve the land use plans and zoning for 63 local governments by June 1981. At that time, the six regional Coastal Commissions cease to function in anticipation of the as-

sumption of significant permit responsibilities by local governments. To date, 32 land use plans have been certified. In the ideal world, this comprehensive statewide planning process would have access to and therefore developed sufficient information to allow the appropriate siting, i.e., zoning of land areas for industrial, energy and support facilities. The land use plans are required to designate priority land uses in the coastal zone. Priority uses include coastal dependent industrial uses as well as agriculture and visitor-serving commercial uses.

The land use plan must consider "anticipated" energy development. The Commission has made a concerted effort to implement an energy facility siting process by adopting criteria for local government to consider in local plans. Because the existing land uses are largely rural and undeveloped in the four basins that Secretary Watt proposes to include in Lease Sale #53, onshore energy facilities will involve significant changes on planning.

The Commission is repeatedly told by the companies involved in OCS exploration and development that they cannot determine the types and location of facilities which are needed onshore before offshore tracts are leased and exploration takes place. Thus, neither the companies nor the Department of Interior has provided the Commission or local governments with sufficiently detailed information to allow the Commission to prepare for the onshore impacts through specifying the location, kinds, and intensity of coastal dependent industrial uses in the Local Coastal Program. Secretary Watt's action exacerbates the problem by putting back four basins covering approximately 700 linear miles in California coastline, located offshore of county and city LCP planning jurisdictions that had not been planning for OCS development. Programs for several of these areas (e.g., Santa Cruz, Monterey, Humboldt) are in the local hearing process. Others have been approved by the Commission (e.g., San Mateo County and Marin County).

The need to certify onshore land uses "now" puts the Commission in a Catch-22 situation. It is impossible for the Commission and local governments to formulate rules and conditions for onshore oil development in the local coastal

programs if they are not told of the onshore expectations of offshore development.

To sum up, the size and indefinite scope of the lease sale presents enormous planning problems for the state. As far back as July 1978, the Commission submitted detailed basin by basin comments on the size, timing, and location of Lease Sale 53. The Commission has often described the existing land uses. The Commission repeats that land uses in central and northern California, with the exception of San Francisco Bay, have relatively no existing industrial infrastructure which could accommodate offshore oil development. In addition, existing and projected land uses are incompatible with industrial development. The existing land uses, for example, agriculture in Monterey County, provide not only the *economic* foundation of the local area, but also food stuffs exported through out the country. The Commission takes this opportunity to remind Secretary Watt of its express concerns of the appropriateness of including the four central and northern California basins within Lease Sale #53. The Commission hereby incorporates by reference its previous detailed basin by basin comments as recommendations on timing and location of lease sale activities pursuant to OCSLAA and, independently as recommendations pursuant to the consistency requirements of the CZMA.

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

APRIL 28, 1981

Mr. Michael L. Fischer
Director, California Coastal Commisson
631 Howard Street, 4th Floor
San Francisco, California 94105

Dear Mr. Fischer:

We have received your letter of March 23, 1981, regarding OCS oil and gas Lease Sale 53. You indicated that the purpose of the letter is to formally request the Interior Department to submit a consistency determination for the Secretary's action of February 10, 1981, which proposes to reinsert the four northern basins into Lease Sale 53. You also note that the action of February 10, 1981 anticipates that San Francisco Bay will be a staging and service area for OCS development and thus the San Francisco Bay segment of the California Coastal Management Program must also be analyzed in the consistency determination you are requesting.

We indicated to you in the Department's determination of October 22, 1980, that none of the stipulations anticipated for Lease Sale 53 are expected to directly affect the coastal zone. We also indicated that the Secretary's decision to issue the Final Notice of Sale for the Central and Northern California OCS Sale will identify exactly which tracts will be offered for sale. We stated that this decision is not an activity directly affecting the coastal zone because no changes to coastal resources or physical impacts on the coastal zone are possible without subsequent decisions and actions. In sum, we stated that we have assessed the possible effects of the Department's pre-lease activities associated with Sale 53 and found that none of the activities directly affects the California Coastal Zone.

We believe that the October 22, 1980 letter satisfies our obligations regarding Lease Sale 53 under Section 307(c)(1) of the CZMA and the implementing regulations—15 CFR

930. It is therefore our opinion that your March 23, 1981 request for a determination has already been met. As you know, the 15 CFR 930 regulations do not require us to analyze a State coastal zone management program nor any of its segments to assess the consistency of the Federal activity unless we find that the activity would directly affect the coastal zone. Consequently, we do not believe an analysis of the San Francisco Bay segment for the purposes you indicate is required.

We also would like to thank you for your letter of April 8, 1981, restating the California Coastal Commission (CCC) position on Lease Sale 53. The Secretary will consider your views in making future decisions on this Sale. The letter included an expresssion of CCC's interest in two upcoming Commerce Department rule-making efforts—one dealing with the regulations governing two marine sanctuaries off California and one with clarification of the Section 307(c)(1) federal consistency term—"directly affecting". We look forward to the rule-making and the resolution it will provide to the "directly affecting" issue.

Sincerely

By Moody R. Tidwell
MOODY R. TIDWELL
Deputy Solicitor

cc: Secretary's RF (2)
A/S PBA (2)
Stang, Sant (2), Ross
Elliott

PPA/PStang:jg:4/22/81

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 1, 1981

Honorable Edmund G. Brown, Jr.
Governor of California
Sacramento, California 95814

Dear Governor Brown:

After extensive examination of information relating to the proposed notice of sale issued last October on OCS offering #53, including the comments and recommendations in your letter of December 24, 1980, we have decided to offer for lease this month the 115 blocks in the Santa Maria basin. We made this decision based on what we found to be national benefits far outweighing the potential for harm to the well-being of the citizens of California.

No decision has been made yet on the other four basins proposed as a part of offering #53. Your comments on the size, timing, and location of the leasing activity proposed in February were recently received, and they will be given thorough analysis and consideration. A decision on the second part of the sale, and whether or not a reasonable balance of national and State interest calls for the leasing of all or part of these basins, will be made in late May or June.

Extensive consultations have occurred with all interests in the Department of the Interior. Professionals from all Interior agencies involved in the OCS sale decisions, including the biological scientists in the United States Fish and Wildlife Service, continue to recommend that the entire basin be leased for exploration.

We have considered the recommendations which you made by letter of December 24, 1980, on the size, timing and location of leases to be offered in the Santa Maria Basin. In each instance we have weighed, on the one hand, the effects on the national interest and, on the other, the effects on the well-being of the citizens of California that would result from acceptance of your recommendations. We approached this balancing of interests in the context of the legislated mandate of the OCS program and its specific ap-

plication to the case of offering #53. Our thinking on these matters is contained in Enclosure 1. The mission of the program as established by Congress constitutes a strong mandate to proceed with offshore leasing wherever this can be safely done. The excellent operating record of the program provides a strong climate of confidence that we can proceed safely.

Within this context we have tried to evaluate your specific recommendations on size, timing and location. We have attempted to do this with as much rigor as possible, recognizing that both the nation's interest and the State's well-being involve intangible values that do not lend themselves to readily-available or easily-agreed-upon measurement. Nevertheless, because the statute calls for a reasonable balancing to be performed, we have tried to examine and array the orders of magnitude of value which are at stake as best we can. A paper describing the approach we used in this effort is included in Enclosure 2.

With this and other information in mind, we have decided not to accept your recommendations on size, timing and location because we have determined that they do not provide for a reasonable balance between the national interest and the well-being of the citizens of California. An approach we used to help us in reaching this balancing determination is described in an attachment to this letter.

Our initial purpose in offering these tracts is to permit exploration so that the potential oil and gas reserves, if any, can be inventoried. As you are aware millions of dollars have already been spent on environmental studies in preparation for this offering. Later, should recoverable resources be identified, the OCS Lands Act would require further environmental documentation and safeguards.

Accepting your recommendatons would mean the loss of potential resources for the nation which far outweigh any harm that might potentially accrue to California.

OCS exploration in the Santa Maria area will be undertaken with careful controls designed to maintain a high standard of environmental protection. The notice of sale incorporates, in the "Notice of Lessees" section, language notifying lessees that shallow gas deposits may occur on cer-

tain tracts and that special care will have to be taken there. Also, that section of the notice advises lessees that the training program required by stipulation no. 8 will require familiarization training regarding marine birds and mammals for persons working on the project.

Your extensive and timely participation in the lengthy planning and preparation activities for this offering are very much appreciated. We intend to make the fullest possible use of the comprehensive set of safeguards available to us under the law to protect the valuable marine and coastal resources of California.

Sincerely,

/s/ James Watt

JAMES WATT
Secretary

2 Enclosures

OCS PROGRAM MANDATE AND SALE 53

The Outer Continental Shelf Lands Act, as amended, places on the Federal Government an affirmative responsibility to obtain for the public the benefits of oil and gas resources located on the U.S. continental shelf. Those resources are to "be made available for expeditious and orderly development, subject to environmental safeguards," in order to "achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorble balance of payments in world trade."

The law envisages that all areas with oil and gas potential will contribute to the Nation's energy supplies. It calls for "an equitable sharing of developmental benefits and environmental risks among the various regions," and establishes a comprehensive framework of regulatory controls to assure that activity proceeds safely in those regions. The statute indicates that the Congress expected that environmental protection could be achieved through sound planning and operating practices provided for in the amended law, and would not require geographic areas to be closed to leasing, exploration and development.

The Congress' confidence in the program and in its own handiwork was not misplaced. Offshore oil and gas activities have had an excellent environmental record in recent years. While there are over 2000 currently producing offshore wells, since 1970 only two spills of greater than 1,000 barrels (1/9/73-9,935 barrels; 11/23/79—1,500 barrels) have occurred from offshore platforms. Both of these were spills of stored oil, not loss of well control. Before that, Santa Barbara blew 77,000 barrels in 1969—the largest U.S. platform spill. The Mexican spill at Ixtoc last year was, we believe, far larger but may have occurred through operating procedures which would not be used in U.S. waters. Our marine scientists report that there have been no significant, long-term damages to the marine resources as a result of either of these spills. Except for the Ixtoc spill, the offshore drilling performance is dramatically better than

that of tankers under foreign registry, the alternative source of oil which OCS production can displace. The Argo Merchant, for example, spilled 183,000 barrels of #6 fuel oil, much more toxic than crude oil, off New England in 1976.

In addition to being environmentally superior to tankered imports, offshore production is also a tremendous boon to the Nation's economy and security. It costs less to produce than the OPEC price, and the differential is returned to the public in government revenue. National income is increased, the balance of trade improved, and the dollar strengthened in international markets. The risk of severe economic shock from another embargo (or further price run-up) is reduced. National security is enhanced, as well as U.S. foreign policy flexibility and stature.

The controversy over offshore leasing is the classic problem of public interest versus local interest. All Americans have a positive stake in this national program. However, among the parties to individual sale decisions, local and state concerns do not reflect this overriding national need or perspective. Nearby OCS activity does not change the availability or the price of oil supplies in the region. Since all the government revenue goes into the Federal treasury, no state has much to gain from leasing, unless it wants additional development and jobs in its coastal zone. Few states do. On the other hand, there are some industrial-type facilities which will accompany offshore development and these are not always coveted neighbors. There is also some modest risk of conflict with other ocean uses, such as fishing, and of environmental damage from, for example, an oil spill, the probability of which cannot be reduced to zero. This situation is a blueprint for local opposition, and indeed the OCS program off the lower 48 states is now down to the politically toughest areas to handle—New England, where no exploration has ever occurred although a first-ever lease sale was held in 1979, and Central and Northern California, where no leasing has occurred since a sale in the 1960's which yielded evidence of oil and gas but no commercial find.

The Congress recognized the State interest in OCS leasing and the likelihood that the State view would differ from the Federal. It directed the Federal Government to assist states by providing timely information for planning, and to consult with states and provide them an opportunity to review, comment on, and participate in decisions. It did not, however, assign any decision authority to the States.

Regarding lease sale proposals, the statute reads:

> The Secretary shall accept recommendations of the Governor ..., if he determines ... that they provide for a reasonable balance between the national interest and the well being of the citizens of the affected State.

This balance of interests, on the merits, seems to come out overwhelmingly for proceeding to explore, and if discoveries are made, to develop the OCS. The value of the oil and gas (in both monetary and national interest terms) appears greatly to exceed the limited risks of development. This basic reality is not palatable to some states, and their strenuous objections have caused political decisions to be made in the past that delayed entry into some areas. Those areas have been rescheduled and the political struggle resumed.

Sale 53 is the current case in point. It has been scheduled and delayed many times, and the Northern California coast is now the last promising lower 48 area to have had no leasing and exploration since the 1973 embargo.

California argues that the risks are too great for the amount of oil to be found. This is false.

—The risks are limited, as has been discussed extensively in environmental statements, correspondence with California, and numerous other documents for Sale 53. The natural resources of the area are unique and valuable but are they more worthy of protection than those of other areas of the U.S. OCS?

—There is a U.S.G.S. estimate, which is simply a best guess. The estimate is for 242 tracts which sit atop 5 basins of much more substantial size. These tracts are a first, exploratory step toward possible broader activity which may be of much greater value if a real find is made.

—The resources estimated by the U.S. Geological Survey to be present in the 5 proposed lease areas would be worth $42 billion at today's prices.

—Whatever resource is ultimately found, the Congressional OCS mandate directs the Federal Government to "insure that the extent of oil and natural gas resources . . . is assessed at the earliest practical time."

—Oil spill risk varies directly with the amount of oil handled. If limited oil is found, the potential for environmental damage from a spill declines proportionately.

—Domestic oil and gas supply is principally the aggregate of production from a large number of small fields. Each producation site makes a valuable contribution.

APPROACH TO DETERMINATION OF REASONABLE BALANCE UNDER SECTION 19 OF THE OCS LANDS ACT

Section 19 of the OCS Lands Act Amendments of 1978 requires the Secretary to accept recommendations regarding the size, timing or location of a proposed lease sale from the Governor of a coastal state if the Secretary determines "that the recommendations provide for a reasonable balance between the national interest and the well-being of the citizens of the affected state."

California's recommendations on the size, timing and location of OCS Sale 53 pertaining to the Santa Maria basin were submitted to Interior on December 24, 1980.

The recommendations were:

(1) Delete 34 tracts (129-155 and 158-164)

(2) Delay the Sale until seven ongoing studies are completed. The current schedule indicates completion of these studies in October, 1983.

The reasonable balance determination of Section 19 highlights issues that arise in OCS oil and gas leasing because the benefits and costs of OCS development are not distributed in the same proportion throughout the Nation. The net economic benefits of OCS development are substantial, but, because they are captured primarily in the form of federal revenues, they accrue to the Nation as a whole. Citizens of affected coastal states receive a share of these benefits in the form of federal funds and services. Based on an alloca-

tion proportional to California's share of Federal tax payments, Californians receive about 12% of the net national economic benefits of OCS development. However, because the OCS contribution to federal revenues is subsumed within the much larger total federal budget, subunits of the population, such as the citizens of California, generally do not perceive their share in OCS benefits. On the other hand, the costs of greatest concern, the potential adverse environmental effects, particularly from oil spills, fall and are generally seen as falling primarily upon the citizens of affected coastal states. A decision regarding a Governor's recommendations on size, timing and location of OCS lease sales thus requires careful consideration of the way in which implementation of those recommendations would affect the magnitude and distribution of the benefits and costs of the proposed leases.

From the national perspective, the decision to lease a set of tracts is based on a judgment that the gains to the Nation outweigh the losses. More specifically, the gains from OCS development include the net income produced (the production revenues less the actual costs of exploration, development and production), the gains in national security and decreased vulnerability to import disruption, and the environmental gains of reduced tankering of imported oil, particularly in ships of foreign registry that have poorer safety and oil spill records. The national losses include the expected adverse environmental effects including oil spills and other discharges into coastal waters, losses in aesthetic and recreational values, losses in wildlife and fisheries productivity and air pollution. It is in the national interest to proceed with leasing a set of tracts if the value of these losses is not expected to be as great as the gains.

In considering a Governor's recommendation not to lease a set of tracts, the national interest is to be balanced with the well-being of the citizens of the State. The tracts should be leased if the net gain to the national interest is greater than the net loss to the citizens of the State. The Governor's recommendation should be accepted if the net gain to the national interest is less than the net loss to the State.

The net gain in the national interest is the net income expected to be generated by the development less the expected damages. The net loss to the citizens of the State is the difference between the expected damages falling on citizens of the State, and their share of the national benefits. However, because the OCS Lands Act as amended provides compensation mechanisms for two important types of damages, oil spill pollution and damage to fishing gear, the value of damages to the State must be reduced by the amount of the expected compensation. Since there is as yet little case history for use of these compensation mechanisms, the percentage of environmental damages which will be compensated is not known.* However, in the case of both mechanisms, the compensation provided for is comprehensive and essentially without financial limit. It can be expected to offset well over half of the damages sustained.

Governor Brown has recommended deleting 34 tracts in the Santa Maria basin. In order to help simplify the balancing of the national interest with the well-being of the citizens of California, the following assumptions were made which greatly favor California's side of the balance:

1) all of the expected national losses in terms of damages associated with exploration, development and production of the 34 tracts will be borne by Californians.
2) there will be no compensation for these damages given to Californians from the Oil Spill Pollution or Fisherman's Contingency funds or any other federal compensation,
3) the national interest gains will include the value of net national income, but no estimate of gains in national security or reduced tanker spills.

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*Note that the compensation of State citizens reduces the net losses they experience but does not change the balance from the national perspective. This is because the compensation is merely a transfer payment that redistributes wealth from one part of the nation to another part. Such a transfer payment does not change the fact that whatever environmental damages occur reduce the well-being of all citizens in the nation.

The net national income from development of the resources on 34 tracts is the gross production revenues less the costs of exploration, development and production. The U.S.G.S. estimates that the 34 tracts contain an expected level of recoverable resources of 78 million barrels of oil equivalent. This is only a best guess, with a wide margin of error, and cannot be validated or corrected without exploratory drilling. At $35 per barrel, the estimated production of 78 million barrels of oil equivalent would yield $2730 million in gross production revenue. Allowing for higher prices expected during the production phase, the production value is estimated to be $3475 million. Since the 78 million barrel estimate is the "risked" or expected level of recoverable resources (that is, it reflects the small chance of finding oil or gas on each prospect), $3475 million is the expected gross value of the production from the 34 tracts in question. Costs for these 34 tracts are estimated to be about $1675 million. To estimate the net national income contributed by these tracts, the difference between production revenues and costs is calculated and discounted to present value to reflect the fact that a substantial portion of the costs occurs in early years while production revenues occur in later years. Discounting is necessary to account for the effects on the productivity of the economy of having valuable resources available at earlier times. The expected net national income from the 34 tracts discounted to the present time at 8% is estimated to be about $546 million.

Thus, the question to be asked in balancing the national interest and the well-being of Californians for these 34 tracts is: Do the...

[nation's gains] minus [its losses] equal [California's losses] minus [its gains]?

That is, do the...

[national interest gains] minus [expected damages] equal [expected damages] minus [California's 12% share of the national interest gains]?

To be more specific, we can use our best estimates of the national income produced from the 34 tracts. The question then becomes does...

$546 million − expected damages = expected damages − $66 million?

If expected damages in present value terms $306 million, the two sides are equal and the decision to lease or not to

lease, is a toss-up. If the expected damages are considerably more than $306 million, Governor Brown's recommendation to delete the 34 tracts clearly should be accepted. If the expected damages are considerably less, it clearly should not. If Californians are compensated for half the damages they bear, a conservative estmate, this balance point would be $408 million rather than $306 million.

The determination of reasonable balance thus turns on judgment about whether the value of the expected damages is sufficient to reach this balance point. Since the damages of a large oil spill pose potentially the greatest single source of harm and are dominant in public concerns regarding OCS development, it is useful to consider how the expected damages from OCS oil spills from development of these 34 tracts compare with the damages required to tip the balance. While it is difficult to estimate expected damages from leasing particular tracts, an upper bound can be estimated.

While there are over 2000 currently producing offshore wells, since 1970 only two spills of greater than 1,000 barrels have occurred from offshore platforms (1/9/73—9,935 barrels; 11/23/79—1,500 barrels). Both of these were spills of stored oil, not loss of well control. Before that, a tract in the Santa Barbara Channel spilled 77,000 barrels in 1969—the largest U.S. platform spill. The Mexican spill at Ixtoc was far larger, but may have occurred through operating procedures which would not been used in U.S. waters.

A 1970 study of the 77,000 barrel oil spill in Santa Barbara placed the measurable costs at $16.4 million. Using this information and other historical data on platform and pipeline spills, a rough estimate of the expected cost of measurable damage from major spills can be calculated.

Recent U.S. Geological Survey data indicate that 2.1 spills greater than 1000 barrels are expected from production platforms for every 1 billion barrels produced. USGS also estimates that transporting oil by pipeline would result in 1.8 such spills for every billion barrels.

The mean size of the nine large recorded United States OCS platform spills and of the eight recorded U.S. OCS

pipeline spills since 1964 is 21,000 and 26,000 barrels respectively. Informal communications with National Oceanic and Atmospheric Administration (NOAA) staff indicate that the measurable cost of damages from these spills in 1981 dollars ranges, in a manner roughly inverse with spill size, between $42 and $420/barrel ($1-10/gal), and averages about $160/barrel ($4/gal). These communications also indicate that recent data on the 1978 Amoco Cadiz spill are expected to place the measurable cost at under $126/barrel ($3/gal).

By assuming the measurable cost of $500/barrel (slightly higher than NOAA staff's informal estimate of the highest cost/barrel of past large spills) and using the risked mean estimate of the expected recoverable oil resources (63 million barrels for the 34 tracts*), a crude estimate of the expected cost of measurable damage from platform and pipeline spills over 1000 barrels can be calculated to be approximately $3 million. This is calculated by multiplying the expected spills per billion barrels of production, the expected production in barrels from the 34 tracts, the mean historic spill size in barrels, and $500 per barrel for both platforms and pipelines.

However, allowance should be made for the fact that the oil spill damages are, like production revenues, primarily a downstream effect. Discounting the expected oil spill damages to present value is necessary to make them comparable to discounted expected net income. Although the likelihood of spills is roughly proportional to the amount of production in a given year, it was assumed for this discounting that all expected spill damages occur in the year of first production 1986. Discounting at 8% for 5 years reduces this expected value to $2 million.

Thus, if the expected measurable damages from spills over 1000 barrels is about $2 million, the balance of the expected damages resulting from any error in the above

*Note that the previous estimate of 78 million barrels of oil equivalent included this expected oil production of 63 million barrels plus 90 billion cubic feet of gas production converted to its oil equivalent on a Btu basis.

calcuation*, expected spills of 1000 barrels or less, the value of the immeasurable damages from oil spills and all other causes related to oil and gas development would have to be $304 million in order for the balancing decision to be a toss-up.

A detailed review has been made of the possible damages discussed in the Final Environmental Impact Statement and in the correspondence provided by the Governor and the various agencies of the State of California. In most cases, it has not been possible to estimate these impacts in quantifiable terms, nor to measure their value monetarily. Many of these potential damages affect highly varied intangible values for which there is no common measure. Nevertheless, the reasonable balance determination set forth in Sec.19 requires that some thoughtful judgment be made about their relative weight. The FEIS and related documents assemble the available information on these potential damages in a useful form for these purposes. These documents in many cases do not attempt to put a quantitative measure on the potential damages avoided by accepting California's recommendations. However the information which is presented does not support the conclusion that the damages in question are major. For example, they are modest compared to the damages of an oil spill exceeding 1000 barrels. In those cases where the magnitude of foregone damages is expressed, the terms used denote a small magnitude—e.g., "relatively minor," "insignificant." A matrix is attached that organizes the judgements drawn from the FEIS material, along with the national income and oil spill estimates above, into a format that facilitates the balancing determination.

Review of this information supports the judgement that damages other than major oil spills are not of sufficient value to be close to $304 million and that the total of the ex-

*It is important to recognize that the relative magnitudes of both the gains and the losses depend on the actual amount of oil and gas produced. More resources than estimated would mean greater gains as well as greater potential losses. On the other hand if the resources discovered turn out to be minimal, then the expected damages will also be minimal.

pected damages is not close to $306 million. Consequently, the recommendation to delete the 34 tracts in the Santa Maria basin from Lease Sale 53 does not provide for a reasonable balance between the national interest and the well-being of the citizens of California and therefore need not and should not be accepted.

Similar considerations are involved in balancing the national interest with the well-being of the citizens of California for the recommendation to delay the sale of all Santa Maria tracts. Accepting this recommendation would necessitate delaying receipt of the national income from development of an estimated 969 million barrels of oil equivalent for 2½ years. Using the same approach as that used for the 34 tracts above, this national income is estimated to be $6.3 billion. To calculate the cost to the nation of postponing this income, the production revenues are recalculated on the basis of the higher prices expected at this later time. This increases the gross value of production by about 5%. Then the costs are subtracted to get net income and the result is discounted to present value at 8% per year. Because the discounting is for 2½ years more than the discounting to get the present value for the net income from a sale held as scheduled, the net income from delayed development, even at higher prices, is less than from the sale as scheduled. The cost to the nation from the delay, as measured by this difference, is $464 million, which includes a cost of Californians of $56 million (12% of $464 million).

Some Californians who oppose leasing of the Santa Maria tracts may feel that delay, in itself, is beneficial. A gain would result from delaying any damages from oil spills that might result. A 2½ year delay in the expected damages from oil spills would reduce their present value by about 18%. Since the expected oil production from the entire sale is about 12.5 times that from the 34 northern tracts, the expected oil spill damages from the sale are about $25 million. The 2½ year delay reduces the present value of these damages by about $5 million.

Delay for the purposes of completing these studies is not likely to result in other gains to the citizens of California approaching the $459 million remaining to tip the balance.

The incremental value achieved in leasing decisions by using more information about the the non-hydrocarbon resources in the area is extremely limited given that extensive information about these resources has already been assembled and the risk to those resources is low, especially during the exploration stage. The information from the seven ongoing studies, to the extent that it has value for offshore oil and gas decisionmaking, will be available for development and production decisions since the studies will be completed before any of these activities begin. Any data generated by the studies, beyond that already provided in interim reports, can be considered and used by federal and state agencies in carrying out their responsibilities related to OCS development and production. The recommendation to delay the sale thus does not provide for a reasonable balance between the national interest and the well-being of the citizens of California and need not and should not be accepted.

MATRIX OF GAINS AND LOSSES TO THE CITIZENS OF CALIFORNIA AND THE NATIONAL INTEREST TO BE USED IN DETERMINING "REASONABLE BALANCE" REGARDING GOVERNOR BROWN'S RECOMMENDATIONS ON OCS SALE 53

Criteria for:	*Recommendations* Delete 34 Santa Maria Tracts	Delay the Sale of all Santa Maria Tracts
National Interest Losses		
—Oil and gas production	78 million barrels	delay only
—Value of production	$3.5 billion	delay only
—Income less the cost of mitigation	$546 million less cost of mitigation	$464 million[1]
—Reduced costs of clean-up and costs of lost resources from oil spills during tankering of imported oil	not estimated	not estimated
National Interest Gains		
—Reduction in OCS oil spilled	5700 barrels	delay only
—Reduction in oil spill damages	$2 million	$5 million
—Reductions in aesthetic and lifestyle losses	improved (4-194)[2]	relatively minor
—Reductions in wildlife damages	reduced impacts (4-194)	major effects not expected
—Reductions in damages to fishing gear	reduced conflicts (4-194)	small (2-6)
—Reduction in losses of fishing profits not included above	small[3]	small (2-6)
—Reduction in water quality declines	improved (4-194)	insignificant (2-2, 2-3)

[1] This represents the cost of delaying receipt of national income for two and a half years.

[2] Numbers in parentheses are the relevant pages of the EIS. Note also that the conclusion about the 34 tracts deletion option were derived from FEIS Alternative 8, which was a sea otter oriented deletion of 6 tracts with stringent stipulations imposed on 10 other tracts. Conclusions reached on a direct examination of the 34 tract alternative would be similar.

[3] The words small and very small reflect judgments based on information in the FEIS when a specific conclusion of characterization was not expressly related to the FEIS. The words indicate the magnitude of the effect relative to the level of national income.

—Reduction in air quality declines	emissions slightly reduced (4-194)	not significant (2-1)
—Reduction in environmental	small	small (2-9)
	Delete 34 Santa Maria Tracts	Delay the Sale of all Santa Maria Tracts
State Well-Being Gains		
—Reductions in OCS oil spilled	5700 barrels	delay only
—Reductions in uncompensated oil spill damages	$2 million less compensation	$5 million less compensation
—Reduction in aesthetic and lifestyle losses	improved (4-194)	relatively minor
—Reduction in wildlife damages	reduced impacts (4-194)	major effects not expected
—Reductions in uncompensated damages to fishing gear	reduced conflicts (4-194)	very small (2-6)
—Reduction in losses of fishing profits not included above	small (4-194)	small (2-6)
—Reduction in water quality declines	improved (4-194)	insignificant (2-2, 2-3)
—Reduction in air quality declines	emissions slightly reduced (4-194)	not significant (2-1)
—Reductions in environmental losses from induced development	small	small, but may be critical at local level (2-9)
State Well-Being Losses		
—Share of income from OCS oil and gas	$66 million	$56 million*
—Increase in oil expected to be spilled in California waters by tankered imports and resulting damages	not estimated	not estimated

See footnote[1] on page 1
See footnote* on page 1

AFFIDAVIT OF MARI GOTTDIENER

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

MARI GOTTDIENER, being first duly sworn, deposes and says:

1. I am an employee of the California Coastal Commission. In my official position as OCS Coordinator, I have primary staff responsibilities for implementing the Coastal Commission's statutory role regarding offshore oil development under the Coastal Zone Management Act, the Outer Continental Shelf Lands Act, and the Federally-approved California Coastal Management Program.

2. My specific duties include review and comment on proposed lease sales and environmental documents prepared thereon, and review and recommendation to the Commission regarding the consistency with the California Coastal Management Program ("CCMP") of proposed OCS plans of exploration and plans of development submitted by individual oil company lessees.

3. In my capacity as OCS Coordinator, I have served as the principal Coastal Commission staff member on nearly all of the exploration and development plans submitted by the industry for consistency review. Exhibit 1 attached hereto is a map illustrating the location of exploration and development plans in the Santa Barbara Channel which were reviewed by the Commission for consistency with the CCMP since federal approval of the management program. Exhibit 2 attached hereto, is a chronological list of the exploration and development plan consistency reviews in the Santa Barbara Channel which is keyed by number to the locations depicted on Exhibit 1.

4. Exhibit 3 attached hereto is a map which designates the location of tracts which are proposed to be included in future lease sale 68 in the Santa Barbara Channel. A substantial number of the tracts proposed are located within the buffer zone established by the Coastal Commission for protection of significant living marine resources on and around the Santa Barbara Channel Islands.

Subscribed and sworn to before me this 1st day of July 1981

/s/ Mari Gottdiener
MARI GOTTDIENER

/s/ Ruth Natusch
RUTH NATUSCH
Notary Public in and for Said County

OCS Consistency Reviews-Channel Islands Area

California Coastal Commission

1. CC-1-78 Chevron USA, Inc.
   OCS P-0214, 216, and 219
   Commission Concurrence Dec. 13, 1978

2. CC-1-79 Exxon Corporation
   OCS P-0182, 193, 194, and 196
   Commission Currence Feb. 21, 1979

3. CC-3-79 Exxon Corporation
   OCS P-222, 223, 230, 231, 232, and 236
   Commission Concurrence March 19, 1979

4. CC-4-79 Sun Production
   OCS P-0210
   Commission Concurrence May 14, 1979

5. CC-5-79 Chevron USA, Inc.
   OCS P-0215
   Commission Concurrence Oct. 3, 1979

   CC-6-80 Chevron USA, Inc.
   OCS P-0215
   Commission Concur/Reco Sept. 16, 1980

6. CC-6-79 Union Oil POD
   OCS P-202
   Commission Concurrence Nov. 7, 1979

7. CC-7-79 Mobil Oil
   OCS P-0221
   Commission Concurrence Dec. 4, 1979

   CC-8-80 Rincon/General Drilling, Ltd
   OCS P-0221
   Commission Concurrence Feb. 21, 1980

8. CC-8-79 Chevron USA, Inc.
   OCS P-215
   Commission Concurrence Feb. 21, 1980

9. CC-9-79 Chevron USA, Inc.
   OCS P-210
   Commission Concurrence Jan. 24, 1980

10. CC-1-80 Shell Oil
    OCS P-0208
    Commission Concurrence Feb. 21, 1980

11. CC-3-80 Texaco, Inc.
    OCS P-0246, and 0251
    Commission Concurrence March 5, 1980

12. CC-4-80 Chevron USA, Inc.
    OCS P-0234
    Commission Concurrence April 15, 1980

13. CC-5-80 Chevron USA, Inc.
    OCS P-0240
    Commission Concurrence May 21, 1980

14. CC-6-80 Union Oil POD
    OCS P-0216
    Commission Concurrence June 19, 1980

15. CC-7-80 Chevron USA, Inc.
    OCS P-0205
    Commission Objection Aug. 19, 1980

16. CC-9-80 Chevron USA, Inc.
    OCS P-0241
    Commission Concurrence Sept. 16, 1980

17. CC-10-80 Texaco, Inc.
    OCS P-0245
    Commission Concurrence Sept. 16, 1980

18. CC-11-80 Challenger Minerals
    OCS P-0218
    Commission Concurrence Sept. 16, 1980

19. CC-12-80 Conoco, Inc.
    OCS P-0225
    Commission Concurrence Sept. 16, 1980

20. CC-14-80 Conoco, Inc.
    OCS P-0234
    Commission Concurrence Nov. 18, 1980

21. CC-15-80 Chevron USA, Inc.
    OCS P-0217
    Commission Concurrence Nov. 18, 1980

22. CC-16-80 Chevron USA, Inc.
    OCS P-0218
    Commission Concurrence Jan. 20, 1981

23. CC-17-80 Chevron USA, Inc.
    OCS P-0219, 0220, and 0251
    Commission Concurrence Jan. 20, 1981

24. CC-18-80 Conoco, Inc.
    OCS P-0222
    Commission Concurrence Jan. 22, 1981

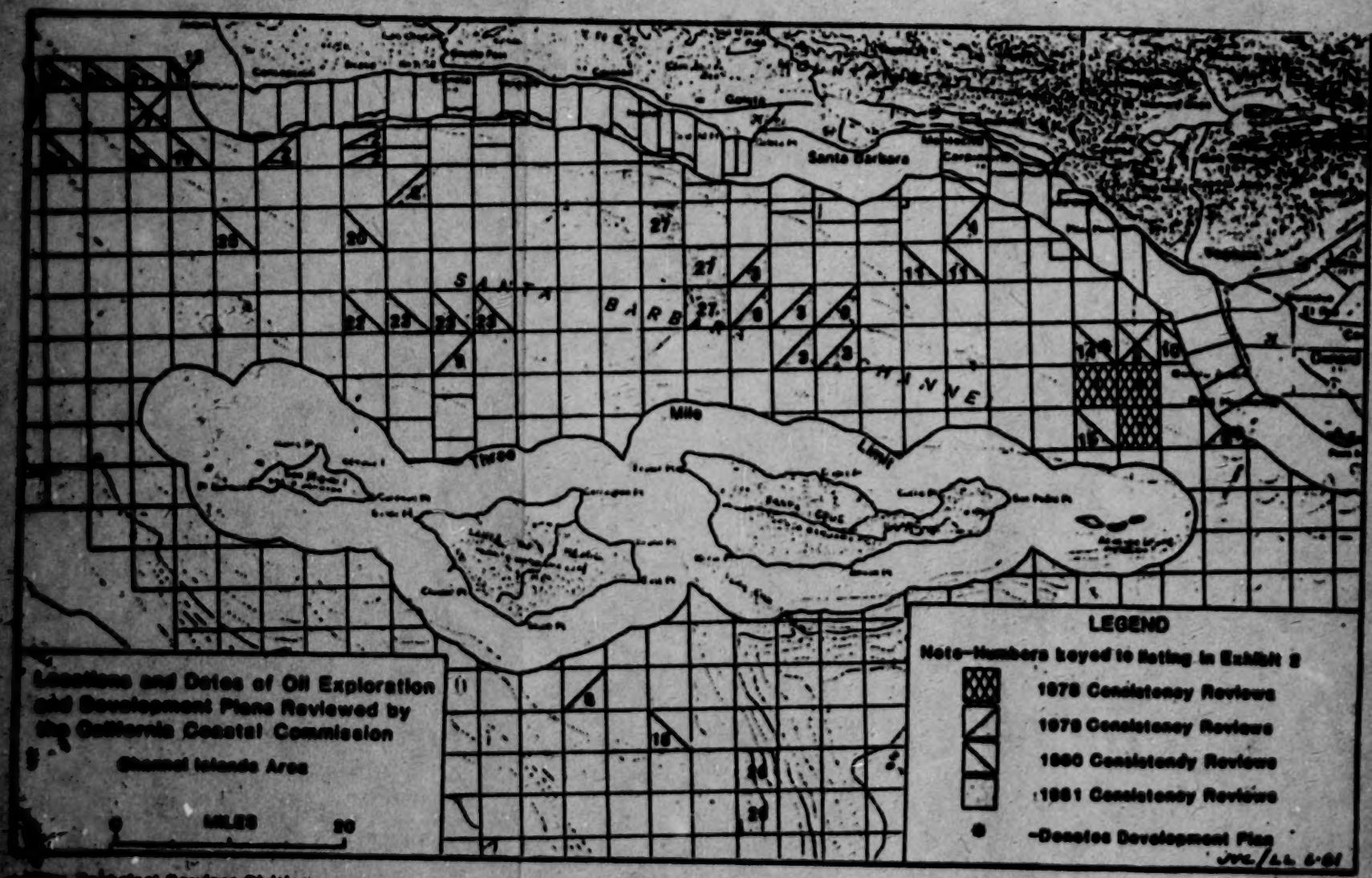
25. CC-19-80 Champlin Petroleum Co.
    OCS P-0237
    Commission Concurrence Jan. 22, 1981

26. CC-1-81 Challenger Minerals, Inc
    OCS P-0218, and 0251
    Commission Concurrence June 14, 1981

27. CC-2-81 Chevron USA, Inc.
    OCS P-0213, 0216, and 0219
    Commission Concurrence June 14, 1981

Source: Energy and Ocean Resources Division,
California Coastal Commission

Exhibit 2



Technical Services Division
California Coastal Commission

Exhibit 1

In the Supreme Court of the United States

No. 82-1326

JAMES G. WATT, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS,

v.

CALIFORNIA, ET AL.

ORDER ALLOWING CERTIORARI. Filed May 16, 1983.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. The case is consolidated with case No. 82-1327, *Western Oil and Gas Association, et al.* v. *California, etc., et al.* and case No. 82-1511, *California, et al.* v. *James G. Watt, Secretary of the Interior, et al.*, and a total of one hour is allotted for oral argument.

In the Supreme Court of the United States

No. 82-1327

WESTERN OIL AND GAS ASSOCIATION, ET AL.,
PETITIONERS,

v.

CALIFORNIA, ETC., ET AL.

ORDER ALLOWING CERTIORARI. Filed May 16, 1983.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. The case is consolidated with case No. 82-1326, *James G. Watt, Secretary of the Interior, et al.* v. *California, et al.* and case No. 82-1511, *California, et al.* v. *James G. Watt, Secretary of the Interior, et al.*, and a total of one hour is allotted for oral argument.

In the Supreme Court of the United States

No. 82-1511

CALIFORNIA, ET AL., PETITIONERS,

v.

JAMES G. WATT, SECRETARY OF THE INTERIOR, ET AL.

ORDER ALLOWING CERTIORARI. Filed May 16, 1983.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. The case is consolidated with case No. 82-1326, *James G. Watt, Secretary of the Interior, et al.* v. *California, et al.* and case No. 82-1327, *Western Oil and Gas Association, et al.* v. *California, etc., et al.*, and a total of one hour is allotted for oral argument.